



# REDACTED VERSION OF DOCUMENT

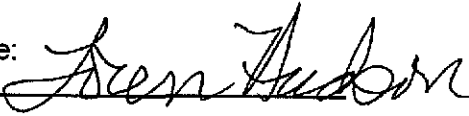

## Master Service Agreement

This Master Service Agreement ("MSA") is executed as of March 26, 2016 ("Effective Date") between the company set forth below ("Contractor"), a Delaware corporation and Pacific Gas and Electric Company ("PG&E"), a California corporation with its headquarters located at 77 Beale Street, San Francisco, California 94105 for the performance of Work or Services in connection with various Capital Improvement Projects. The Parties agree to the following terms and conditions.

|   |  |                                      |
|---|--|--------------------------------------|
| Contractor's Legal Name:  | Quanta Energy Services LLC                       | PG&E MSA No. 4400010156              |
| Contractor's Address:   | 2800 Post Oak Blvd, STE 2600<br>Houston TX 77056 | This Contract consists of 434 pages. |
| Project Name: EPC Cross Cut MSA   |  |                                      |
| Job Location: Various California work Locations and a California business address of 5145 Industrial Way Benicia CA 94510 |  |                                      |

The terms and conditions for all Projects contemplated under this MSA are set forth in the General Conditions (Attachment 1, MSA) and the Special Conditions (Attachment 2, MSA). This MSA is not an exclusive contract and does not guarantee that Contractor will be awarded any Work or Service. Work or Services for a Capital Improvement Project will be authorized through execution of a Contract Work Authorization ("CWA") between Contractor and PG&E. To the extent Contractor is awarded a Capital Improvement Project, all Work or Services will be performed in accordance with the Contract Documents as defined Article 1 of the General Conditions. The CWA will include specific information and terms and conditions for a Capital Improvement Project. This executed MSA (inclusive of Attachments) and an executed CWA (inclusive of Exhibits) will form the entire contract between the Parties.

By executing this MSA, the signatories below represent that he or she has the authority to bind the Party on whose behalf his or her execution is made.

|  |   |
|--|---|
| <b>QUANTA ENERGY SERVICES LLC</b>  | <b>PACIFIC GAS AND ELECTRIC COMPANY</b>   |
| Signature:  | Signature:  |
| Name: <u>Loren Hudson</u>  | Name: <u>DESMOND BELL</u>   |
| Title: <u>Vice President</u>   | Title: <u>SVP &amp; CPO</u>   |
| License No. 1007213  |   |





|                     |  |
|---------------------|--|
| License No. 1007213 |  |
|---------------------|--|

1. **Defined Terms.** All capitalized terms included in this MSA are defined in Article 1 of the General Conditions set forth in Attachment 1.

2. **Attachments.** The Attachments set forth below are included in this MSA are incorporated by reference.

|               |  |
|---------------|--|
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|                |   |
|----------------|---|
| Attachment 11A | Contract Work Authorization Form, Pages 1 through 5 |
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**3. Insurance.** Unless the insurance limits are specifically modified by Exhibit 7A to the CWA, the Contractor must provide and maintain insurance in accordance with Attachment 5 during the term of this MSA.

**4. Contract Term.** Per Section 3.4 of the General Conditions (Attachment 1), the term of this MSA will be enforceable from the Effective Date and will remain in force for period of 5 years, unless terminated under the termination provisions set forth in Article 28 of the General Conditions or if a CWA issued under this MSA has a completion date beyond the expiration of the MSA, in which case the MSA will remain in full force and effect until the expiration of the CWA or until all obligations required under the Contract Documents have been performed by Contractor or have expired (e.g., warranty obligations) under the CWA, whichever is later.

**5. Conflicts.** All conflicts between this MSA (inclusive of all Attachments) and any subsequent CWA (inclusive of all Exhibits) will be resolved in accordance with Section 3.2 of the General Conditions (Attachment 1).

| ADMINISTRATION  |   |   |                            |
|---|---|---|----------------------------|
| PG&E Negotiator   | Roy Green   | Contractor Representative   | Loren Hudson               |
| Phone   | 415-314-9702  | Phone   | 707- 751-2125              |
| Email   | roy.green@pge.com   | Email   | lhudson@QuantaServices.com |
| Accounting Reference  | As stated on each duly authorized Contract Work Authorization   |   |                            |
| PG&E Work Supervisor:   | As specified on each duly authorized Contract Work  | Phone: As specified on each duly authorized Contract Work Authorization |                            |
| INVOICE INSTRUCTIONS:<br>Contractor shall send invoices for each payment when due, showing the Contract number, to: | Send ORIGINAL Invoice to:<br>(See note below if using PG&E's electronic invoicing system)   | PG&E Accounts Payable*<br>PO Box 7760<br>San Francisco, CA 94120-7760   |                            |
|   | Send COPY of Invoice to:  | As specified on each duly authorized Contract Work Authorization        |                            |
| PACIFIC GAS AND ELECTRIC COMPANY  | For information regarding invoice status, call PG&E's Paid Help Line at (800) 756-PAID (7243) or go to AP Web Reporting site at <a href="http://www.pge.com/actpay">www.pge.com/actpay</a> .<br><br>*Note: Contractors using PG&E's electronic invoicing system do not need to mail a copy of the invoice to PG&E Accounts Payable. |   |                            |

| INTERNAL PG&E USE ONLY |  |   |
|------------------------|--|---|
| Distribution Date      |  |   |
| Distribution of Copies | <input type="checkbox"/> Document Services<br>(Signed Original Copy)<br>Mail Code N5D<br>245 MARKET ST., SAN FRANCISCO | <input type="checkbox"/> Contractor<br>(Signed Original Copy) |
|                        | <input type="checkbox"/> Work Supervisor   | <input type="checkbox"/> Manager                              |
|                        | <input type="checkbox"/> Invoice Approver  | <input type="checkbox"/> Supervisor                           |
|                        | <input type="checkbox"/> V.P.  | <input type="checkbox"/> Sourcing/ Purchasing                 |
|                        | <input type="checkbox"/> Director  | <input type="checkbox"/> Law                                  |



# Attachment 1 General Conditions



***Pacific Gas and  
Electric Company®***

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## 1. DEFINITIONS

Capitalized terms include the defined terms set forth below as well as titles of Attachments to the Master Service Agreement ("MSA") and Exhibits to the Contract Work Authorization ("CWA").

**1.1 "Adverse Weather"** is winds of 60 m.p.h. or more, or unusual precipitation (beyond 21 inches per year) that prevent or substantially impedes the construction work from proceeding resulting in a delay in the Contract Time beyond the designated number of adverse weather days included in the approved Schedule included in the CWA per a 12 month period. Construction work is substantially impeded if more than half of a planned and otherwise available workday is lost except to the extent the delay is also caused by any fault, neglect, act, or omission of the Contractor, its engineers, consultants, subcontractors (inclusive of all tiers), suppliers, or any of their respective employees or entities in direct privity of contract for whom they may be liable.

**1.2 "Agreed Program"** includes the data, criteria, programming, documentation, and requirements developed by Contractor and PG&E, with assistance and input from other Project Team Members (as applicable) for each Capital Improvement Project that is acceptable to PG&E and meets acceptable industry standards and is sufficient to accommodate PG&E's goals and functional requirements.

**1.3 "Amendment"** is a document executed by PG&E and Contractor amending the terms and/or conditions of the MSA or a CWA but not adjustments in Contract Price or Contract Time.

**1.4 "Applicable Law"** includes all local, state, and federal laws, rules, regulations, ordinances, building code or other codes, statutes, or regulations, or lawful orders of Governmental Authorities that are relevant to proper and safe performance of the Services and Work, as well as occupancy and operation of the Capital Improvement Project including, but not limited to, all applicable Federal Energy Regulatory Commission, North American Electric Reliability Corporation, California Independent System Operator, United States Department of Transportation, and California Public Utilities Commission regulations, rules, orders, decisions, and requirements..

**1.5 "Approved Issuer"** is a United States commercial bank or a United States branch of a foreign commercial bank acceptable to PG&E. In either case, the issuing bank must have a credit rating of at least A- with a stable designation from S&P and A3 from Moody's with a stable designation. In the case of a United States branch of a foreign bank, PG&E may: a) impose restrictions, limits, and additional requirements regarding any security instrument issued; and b) require: (i) that a U.S. commercial bank with the credit rating identified herein act as a "confirming bank" (as defined in Article 8 of the ICC Uniform Customs and Practice for Documentary Credits 2007 Revision (aka "UCP 600")), and (ii) that additional terms and conditions be included in any security instrument issued.

**1.6 "Bidder" or "Bidders"** includes all engineering, technical and professional firms or construction companies that respond to the Request for Proposal.

**1.7 "Budget"** is the amount PG&E has authorized for performance of the Work or Service.

**1.8 "Building Information Model" or "BIM"** is a parametric, computable representation of a Capital Improvement Project design developed by the Engineer of Record, its consultants, and any design-build subcontractors, and includes construction details developed by the Contractor and its subcontractors (inclusive of all tiers). As used in the Master Services Agreement and CWA, references to BIM or the Model include the primary design model or models and all linked, related, affiliated, or subsidiary models developed for design, estimating, detailing, fabrication, or construction of a Capital Improvement Project, or any portion or element of the Capital Improvement Project. The portions of the Model prepared by the Engineer of Record, its consultants, and design-build subcontractors under the responsible control of a licensed design professional are Construction Documents. The portions of the Model prepared by the Contractor or design-assist subcontractors to illustrate means and methods for constructing, fabricating, or installing portions of the construction work are Submittals, which are not Construction Documents. The Model will include more construction details than shown in the Drawings but may not deviate from the Government Authority approved two-dimensional ("2-D") Drawings and Specifications or the approved permit set without obtaining subsequent approval from PG&E and the Governmental Authority.

**1.9 "Capital Improvement Project"** is the Work for a gas and/or electric project specifically described in the CWA.

**1.10 "Change Order"** is a written order signed by both Parties authorizing additional Services or Work, modifies the Contract Price, and/or grants an extension or reduction in the Contract Time.

**1.11 "Change Order Request" or "COR"** is a written request to PG&E for Change Order, which sets forth the nature of the change, the reason for the change, and the effect, if any, on the Contract Price, Contract Time, or both.

**1.12 "Claim"** is an unresolved dispute between PG&E and Contractor, which may include other Project Team Members through joinder, involving monetary or equitable relief that arises out of or relates to a Capital Improvement Project or Projects, the Contract Documents, performance of the Services or Work, or third party claims for payment, personal injury or property damage, infringement of intellectual property rights, or violation of Applicable Law.

**1.13 "Construction Documents"** include the 2-D Drawings and Specifications developed and assembled by the Engineer of Record, its consultants, and design-build subcontractors that are approved for construction by Governmental Authorities, together with those parts of the Model described as Construction Documents in the definition of Building Information Model above, any clarifications through responses to requests for information, design sketches, or other such clarifications issued post-permit, and any modifications through executed Change Orders.

**1.14 "Construction Manager"** is the entity retained by PG&E to manage and administrate the construction process.

**1.15 "Contract Documents"** include the MSA (inclusive of the General Conditions, Special Conditions, and other Attachments) and the CWA (inclusive of all Exhibits) including all Construction Documents, Schedules, and any subsequent Change Orders or Amendments.

**1.16 "Contract Price"** is the total cost to PG&E for Contractor's performance of the Services or Work based on the compensation model terms and conditions set forth in the CWA and any approved Change Orders.

**1.17 "Contract Time"** is either the time allotted in the CWA for performance of a certain portion of the Services (if Contractor is not performing all Services), or the time allotted in the CWA to achieve Substantial Completion of the Work, subject to extensions of time through executed Change Order.

**1.18 "Contract Work Authorization" or "CWA"** is the executed document authorizing a particular Capital Improvement Project or Projects that are tied to the MSA and incorporating Capital Improvement Project or Projects specific information, terms, conditions, and Exhibits.

**1.19 "Contractor"** is the entity entering into a MSA with PG&E.

**1.20 "Contractor Parent Guarantor"** is Contractor's corporate parent acceptable to PG&E.

**1.21 "Drawings"** means the 2-dimensional graphic illustrating a Capital Improvement Project design, inclusive of elevations, plan views, dimensions, and details of the construction work.

**1.22 "Effective Date"** is the date that the MSA or CWA (as applicable) are deemed executed by the Parties.

**1.23 "Engineer of Record"** is the California State licensed engineer who is responsible for designing a Capital Improvement Project or Projects. With respect to design-build portions of the Work, the licensed engineer who provides the design and stamps and seals the Drawings, calculations and other design documentation is the Engineer of Record with respect to that portion of the Work.

**1.24 "Fee"** is the amount of profit paid to Contractor for Services or Work rendered per the specific compensation model terms and conditions set forth in the CWA, and in accordance with Article 6 of the MSA (as applicable).

**1.25 "Final Completion"** is the date after Substantial Completion when all Work has been finally completed in accordance with the Contract Documents; all Punch List items have been completed and accepted by the Parties as well as the inspector of record (if applicable); all equipment and systems have been tested and commissioned; all close-out documentation and spare parts required under the Contract Documents have been transmitted to PG&E; PG&E's personnel have received the training sessions regarding operation of all systems as required under the Specifications; a permanent certificate of occupancy has been issued by applicable Governmental Authorities; and the facility is ready for PG&E's utilization and operation.

**1.26 "Force Majeure"** means fire, flood, named storm and other natural disasters; civil disobedience; an act of terror; national emergency; war; unavoidable catastrophic casualties beyond the control of, and not due to any act or omission of, any Project Team Member; or an action or restraint by a Governmental Authority that is beyond the control of the Contractor and materially impedes performance of the construction work, and is not due to an act or omission of Contractor, its employees, engineers, consultants, subcontractors (inclusive

of all tiers), suppliers, or anyone for whom any of them may be liable. Labor disputes and strikes are not a Force Majeure event.

**1.27 "Good Engineering and Construction Practices"** means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, equipping, installation, construction, commissioning and testing practices for the Work of a Capital Improvement Project for gas and electric transmission and distribution industry as practiced in California.

**1.28 "Governmental Authority" or "Governmental Authorities"** means any and all federal, state, county, or municipal boards, departments, courts, offices, or agencies that have jurisdiction over the Projects or a Capital Improvement Project.

**1.29 "Hazardous Materials"** means any substance, product, waste, or other material of any nature that is or becomes listed, regulated or addressed under one or more of the following environmental laws: (1) CERCLA, (2) Hazardous Materials Transportation Act, (3) RCRA, (4) the Clean Water Act, (5) the Toxic Substance Control Act, (6) HSAA, (7) the California Porter-Cologne Water Quality Control Act, (8) the California Hazardous Waste Management Act, (9) the California Safe Drinking Water Act, (10) the California Waste Management Act, and (11) any other federal or state law or local ordinance concerning hazardous, toxic, or dangerous substances, wastes, or materials.

**1.30 "Lean Project Delivery Methods" or "LEAN"** are defined by the Lean Construction Institute and include, but are not limited to, the concepts in Article 15, and any Lean Program prepared by Contractor and approved by PG&E for a Capital Improvement Project or Projects.

**1.31 "Master Service Agreement" or "MSA"** is the written contract between PG&E and Contractor inclusive of all Attachments as indicated in the MSA.

**1.32 "Mechanical Completion"** means that the Work has been properly completed, tested, calibrated, and commissioned in accordance with the Construction Documents so that the Capital Improvement Project is ready for safe, efficient and reliable operation by PG&E.

**1.33 "Pacific Gas and Electric Company" or "PG&E"** is the owner of all Capital Improvement Projects and related facilities, which generally include gas or electric transmission or distribution systems.

**1.34 "Party"** refers to either PG&E or Contractor and **"Parties"** refers to both PG&E and Contractor.

**1.35 "Performance Tests"** are actions taken as described in Section 4.10 and the Contract Documents to verify the performance of the Capital Improvement Project, or Projects, including whether the performance guarantees have been achieved.

**1.36 "PG&E Caused Delay"** is a delay caused solely by PG&E's failure to perform one or more of its obligations under the MSA and/or CWA that materially impacts Contractor's ability to timely perform its obligations under the Contract Documents.

**1.37 "PG&E Generated Scope Changes"** are changes directed by PG&E to the scope of Services or Work described in the Contract Documents that impact the Contract Price or Schedule and are not: (i) reasonably inferable from the Agreed Program or as a result of a design error or omission (if Contractor is performing design and construction services); or (ii) not reasonably inferable from the Construction Documents (if Contractor is only performing construction work).

**1.38 "Project Team Members"** include PG&E, Contractor, and their respective consultants, engineers, contractors, subcontractor (inclusive of all tiers) (inclusive of all tiers)s, and vendors.

**1.39 "Projects"** means more than one Capital Improvement Project.

**1.40 "Punch List"** is a comprehensive list prepared by PG&E, Contractor, Engineer, and the inspector of record (if any) itemizing components, equipment, or other elements to either be completed or corrected before Substantial Completion or Final Completion, as applicable.

**1.41 "Record Model"** is a version, or versions, of the BIM that match the Construction Documents included in the permit set, or phases of the permit set.

**1.42 "Resource-Loaded Work Plan" or "RLWP"** is the cost loaded staffing plan prepared by the Contractor identifying its proposed staff members and allocating each staff member's proposed time and billable rates needed to perform the Services as more particularly defined in the CWA.

**1.43 "Schedule"** is Contractor's approved schedule for the Services or Work as defined by the CWA that identifies the sequence and timing for the Work or Services and includes all milestone dates.

**1.44 "Schedule of Values"** is a document that allocates the Contract Price over the duration of the Schedule that will be used during the monthly application for payment to track actual Services or Work performed, percentages complete, and to assist in determining whether Services or Work are progressing as planned.

**1.45 "Services"** includes development, planning, program management, procurement, design and construction, and contract administration services related to either a Capital Improvement Project or Projects. The Services will be particularly defined in the CWA.

**1.46 "Specifications"** are the written requirements for materials, equipment, systems, standards, execution, performance, and workmanship for the Work of a Capital Improvement Project or Projects. The Specifications will be included in the CWA.

**1.47 "Submittal"** includes shop drawings, product data, samples, and similar documentation required by the Specifications or other Construction Documents for a Capital Improvement Project.

**1.48 "Substantial Completion"** means, for each Capital Improvement Project (i) completion of the Work for a Capital Improvement Project in accordance with the permitted Construction Documents; (ii) all systems included in the Work have achieved Mechanical Completion and all Performance Tests have been successfully completed, and (iii) receipt of



approval by those Governmental Authorities having jurisdiction over inspections and substantial completion of the Capital Improvement Project certifying that the Capital Improvement Project is capable of being placed in service.

**1.49 "Target Cost"** will be used only for Work procured under the target cost model as described in Section 6.3.5. The Target Cost is the agreed cost of the Work based on those reimbursable expenses as defined in Section 6.4.7, established by the Parties either at the end of the Planning Phase as described in Section 4.2 or upon approval of schematic design developed in accordance with Section 4.6, as determined by the Parties. The Target Cost does not include profit placed at risk. The Target Cost measures whether a Capital Improvement Project or Projects meet PG&E's financial expectations and will be the threshold against which the final actual cost of the Work is compared upon Final Completion to determine the amount of profit earned, if any.

**1.50 "Test Notice"** is written notice from Contractor designating the date(s) for commencement of performance tests on a Capital Improvement Project or Projects.

**1.51 "Target Value Design"** is a forward focused design process that requires project values, cost, schedule, constructability, Budget and PG&E's scheduling requirements to be basic components of the design criteria to drive innovation in designing a Capital Improvement Project or Projects that will provide optimum value to PG&E. Target Value Design uses constructability and rapid cost information from Contractor and its key subcontractors (if retained) before design decisions are made to allow the design to progress within the Capital Improvement Project Budget or Projects Budget, as well as PG&E's schedule, engineering, and other design requirements.

**1.52 "Unforeseen and Differing Site Condition"** means discovery of historical or archeological or cultural finds, rare, endangered or threatened species, Hazardous Materials, underground obstructions, underground utilities, geotechnical or soils issues or defects, faults, anomalies, or unknown features or conditions with respect to the Capital Improvement Project that were unknown by Contractor before execution of the CWA or commencement of the construction work, whichever is later, and could not have been reasonably discovered through diligent review of all documentation disclosed in writing to Contractor relating to the particular Capital Improvement Project. To the extent that Contractor is also performing development, planning, or program management, Contractor will only be entitled to relief for an Unforeseen and Differing Site Condition provided that such condition could not have been discovered through diligent planning and reasonable investigative services related to development of the Capital Improvement Project, including but not limited to potholing, hazardous material survey, environmental investigation reports, or geotechnical services.

**1.53 "Work"** means all labor, materials, equipment, appurtenances, and services necessary for Contractor and its consultants and subcontractors (inclusive of all tiers) to properly design, construct, test, and commission a Capital Improvement Project or Projects.

## **2. RELATIONSHIP OF THE PARTIES**

**2.1 Independent Contractor.** The Contractor's relationship with PG&E is that of an independent contractor whose involvement in a Capital Improvement Project is to act solely in the capacity of a California state licensed engineering or contractor performing the Services or Work as described in the CWA and not as an agent, fiduciary, partner, member of, subsidiary of, or otherwise affiliated with PG&E. Contractor acknowledges that it is responsible for any acts,

errors, or omissions of Contractor's principals, employees, agents, and/or any other parties, either directly or indirectly, in privity of contract with Contractor including, but not limited to, engineers, consultants, subcontractors (inclusive of all tiers), suppliers, and their respective agents and employees, and other persons performing any portion of the Services or Work on behalf of Contractor.

**2.2 Subcontracting.** Contractor may not subcontract any portion of the Services or Work absent PG&E's prior written approval in each instance. To the extent PG&E authorizes Contractor to subcontract portions of the Services or Work, all consulting agreements and subcontracts, including supply agreements, must be in writing, must be approved by PG&E prior to execution, and must bind each engineer, consultant, subcontractor (inclusive of all tiers), and supplier to the Contract Documents and require that each subcontracting party assume toward Contractor all obligations and responsibilities that Contractor assumes toward PG&E under the Contract Documents with respect to the portion of the Services or Work performed by the party. Contractor guarantees the performance of all consultants, subcontractors (inclusive of all tiers) and suppliers performing any part of Contractor's responsibilities and shall be solely responsible for any acts or omissions of consultants, subcontractors (inclusive of all tiers) and suppliers while rendering Services or Work to PG&E.

**2.3 Standard of Care.** Contractor will perform all Services and Work using its best skill and attention and in a timely, workman-like manner consistent with the degree of care and skill customarily exercised by prudent licensed engineers and contractors utilizing Good Engineering and Construction Practices in relation to development, planning, program management, procurement, design, construction, and contract administration for a Capital Improvement Projects or Projects of similar size, scope, quality, and complexity within the State of California.

**2.4 Licensing.** Contractor and its engineers, consultants, and subcontractors (inclusive of all tiers) must all possess the appropriate California state licenses for their particular design or construction discipline. Nothing in the MSA or CWA will require Contractor or any other Project Team Member to perform any portion of the Work or Services outside of their respective licenses or contrary to the laws, codes, or regulations of the State of California.

### **3. MASTER SERVICE AGREEMENT AND CONTRACT WORK AUTHORIZATION PROCESS**

**3.1 Process.** An executed MSA establishes the base terms and conditions under which Contractor may provide Services or Work on an as-needed basis to PG&E. The MSA does not authorize or guarantee award of any Services or Work, and it is mutually acknowledged that no funds have been committed or will be paid by PG&E upon execution of the MSA. Services and Work will only be authorized by PG&E through an executed CWA. Once the CWA has been executed by both Parties, Contractor agrees to perform all Services or Work as more specifically described in the CWA in accordance with the MSA and applicable CWA.

**3.2 Precedence.** The MSA (inclusive of all Attachments) and CWA (inclusive of all Exhibits) including all Construction Documents, Schedules, and any subsequent Change Orders or Amendments form the basis of the contract between the Parties ("Contract Documents"). The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work or Services by Contractor. The Contract Documents are complementary and are intended to be consistent with each other. What is required by one will



be as binding as if required by all. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence will prevail:

- 3.2.1 The most recent Amendment or Change Order.
- 3.2.2 The CWA.
- 3.2.3 The MSA.
- 3.2.4 Special Conditions to the MSA.
- 3.2.5 General Conditions to the MSA.
- 3.2.6 Specifications.
- 3.2.7 BIM (if applicable).
- 3.2.8 Drawings.
- 3.2.9 Written numbers over figures, unless obviously incorrect.
- 3.2.10 Figured dimensions over scaled dimensions.
- 3.2.11 Large-scale Drawings over small-scale Drawings.
- 3.2.12 Specific details over standard or typical details.

If a conflict exists between the terms set forth in the Contract Documents or any Applicable Law, the Applicable Law will control. Varying degrees of stringency among the Contract Document terms and conditions and Applicable Law are not deemed conflicts, and the most stringent requirement will govern.

**3.3 Non-Exclusive Contracts.** The Parties agree that neither the MSA nor any CWA establishes an exclusive contract between PG&E and Contractor for Work or Services and PG&E, in its sole discretion, may award portions of Services or Work related to a Capital Improvement Project or Projects to other entities. By execution of a MSA, PG&E is not guaranteeing the volume of Work or Services. PG&E expressly reserves all its rights, including but not limited to the following: the right to utilize others to perform or supply Work, materials or Services of the type contemplated under the MSA, the right to request proposals from other entities with or without requesting proposal(s) from Contractor for the type of Services or Work contemplated under the MSA, and the unrestricted right by PG&E to bid or perform any such Work or Service.

**3.4 Term of MSA.** The term of any MSA will be enforceable from the Effective Date and will remain in force for period of 5 years, unless terminated under the termination provisions set forth in Article 28 or if a CWA issued under the MSA has a completion date beyond the expiration of the MSA, in which case the MSA will remain in full force and effect until the expiration of the CWA or until all obligations required under the Contract Documents have been performed by Contractor or have expired (e.g., warranty obligations) under the CWA, whichever is later.

**3.5 The CWA.** Once the Work or Services have been defined and a proposal has been approved by PG&E, the detailed scope of Work or Services, deliverables, Schedule requirements, Contract Time, Contract Price, and any other project specific information will be described in a CWA. The CWA will be issued by PG&E's administrative interface to Contractor for acceptance. Multiple Capital Improvement Projects may be aggregated into a single CWA by PG&E. The terms and conditions of the MSA (including all Attachments), will apply independently to each CWA. The issuance of a CWA will not commit PG&E to any future Work or Service by Contractor. Contractor will not start any Work or Service or mobilize equipment and personnel to the site without an executed CWA and issuance of a written notice to proceed. Contractor acknowledges that all costs for Work or Services performed by Contractor without an executed CWA will be at Contractor's sole risk and expense.

#### **4. OBLIGATIONS AND DELIVERABLES BY PROJECT PHASE**

**4.1 Development Phase.** If providing the development portion of the Services under the CWA, Contractor will timely complete and provide PG&E with the deliverables and services set forth in Sections 4.1.1 through 4.1.6, and as may be more particularly defined in the CWA.

4.1.1 Visit the site(s) and conduct preliminary evaluation of the site(s), inventory of relevant assets at the site, and conduct relevant preliminary testing, and provide a professional opinion as to whether the site selected is suitable for the intended development. If Contractor is unable to provide an opinion, Contractor will identify additional data that is required in order to form an opinion, and will assist PG&E in procuring such data.

4.1.2 Identify any barriers or hurdles to overcome in development of the site including environmental impact reports, geotechnical issues, feasibility studies, CEQA issues, real estate rights or interest to be acquired, or other related issues for development of the proposed Capital Improvement Project or Projects.

4.1.3 Identification of necessary governmental approvals, entitlements, consents, required permits.

4.1.4 Prepare a comprehensive development plan and a critical path schedule that integrates all development and planning activities for the proposed Capital Improvement Project or Projects.

4.1.5 Prepare management plans for proposed Projects or a proposed Capital Improvement Project (including preliminary schedules, budgets, work plans and scope).

4.1.6 Develop necessary programming documentation and criteria with the assistance and input from PG&E and other applicable Project Team Members to come up with an Agreed Program for each proposed Capital Improvement Project.

**4.2 Planning Phase.** If providing the development portion of the Services under the CWA, and upon PG&E's approval of the Agreed Program, Contractor will timely complete the deliverables and services set forth in Section 4.2.1 through 4.2.4 and as may be more particularly defined in the CWA.

4.2.1 Develop, refine, and organize the materials gathered during the development phase into alternative preliminary planning schemes, one or more of which PG&E will select for required regulatory approvals, and further development based on the Agreed

Program. The scheme selected by PG&E will be developed through preliminary facility and site plans, studies, and sketches into a master plan that accurately expresses the overall function and purpose of the Capital Improvement Project or Projects, and demonstrate that the master plan can be accomplished within PG&E's Budget, and meets PG&E's space, facility and functional requirements, regulatory requirements, and use limitations that control development. The master plan must reflect the efficient utilization of the site and any salvaged facility and equipment as agreed by PG&E, properly locate all structures on the site as agreed by PG&E, develop design criteria for facilities and utilities identified in the Agreed Program, and meets applicable Governmental Authority restrictions and requirements. The approved master plan will serve as the basis for development of the detailed engineering and design.

4.2.2 Acquire real property interests in the name of PG&E, if applicable.

4.2.3 Preparation of an overall design and construction strategy.

4.2.4 Preparation of more detailed budgets and schedules and validation that the master plan will achieve PG&E's goals articulated in the Agreed Program and can be accomplished within PG&E's Budget.

**4.3 Project Management For Capital Improvement Project or Projects.** If providing the project management portion of the Services under the CWA, and upon PG&E's approval of the master plan, Contractor will timely complete the deliverables and services set forth in Sections 4.4 through 4.10, and as may be more particularly defined in the CWA.

**4.4 Procurement Engineering and Construction Phase.** Contractor will assist PG&E with the procurement of all design and construction services related to a Capital Improvement Project or Projects by completing the following tasks:

4.4.1 Identify proposed engineers and contractors for performance of the Work and develop interest among engineers, designers, and subcontractors (inclusive of all tiers) in the proposed Capital Improvement Project or Projects;

4.4.2 Establish bidding schedules, develop scopes for engineering services or construction work, and prepare and issue bid documents to prequalified, interested companies.

4.4.3 Collaborate with PG&E regarding evaluation of bidder prequalification and bid analysis to determine the best engineers, contractors, subcontractors, and suppliers suited for performance of the Work.

4.4.4 Negotiate contracts with engineers, contractors, subcontractors, and suppliers and either assist PG&E with direct engagement of such entities for performance of the Work or, if directed to do so by PG&E under the CWA, contract directly with engineers, subcontractors and suppliers per Section 2.2. To the extent that Contractor subcontracts for portions of the Work, at a minimum, the following provisions must be specifically passed through in all subcontracts and consulting agreements:

(a) liability, indemnification, and defense provisions similar to Article 10 specifically indemnifying Contractor and PG&E.

(b) insurance and additional insured requirements specifically naming Contractor and PG&E as additional insureds on all policies other than design errors and omissions policies.

(c) dispute resolution process per Article 27.

(d) assignment provisions allowing for assignment of subcontracts and consulting agreements to PG&E if Contractor is terminated under Article 28 provided that PG&E requests and accepts assignment.

(e) PG&E's third party beneficiary status on all engineering and design consulting agreements.

(f) payment provisions that are coordinated with Article 8, contain similar requirements for retention, payment and withholding, and specifically include the audit provisions per Section 8.10.

(g) intellectual property rights per Article 26.

(h) safety obligations per Article 5.

(i) similar provisions to Articles 17 through 29.

**4.5 Development of Design.** Contractor will actively engage and collaborate with other necessary Project Team members in the following activities throughout the entire design process and at various stages in the development of the Construction Documents.

**4.5.1 Building Information Model.** Contractor will establish a BIM execution plan per Article 16. The Model will be developed in accordance with the BIM execution plan and will be continually updated throughout the design and construction process so that the Model is current with the actual "as-built" condition, and when completed will be the Record Model. To the extent that there are inconsistencies between the 2D plans and the Model, the Model will govern.

**4.5.2 2-D Working Drawings.** Contractor will also produce working Drawings throughout the various stages in the development of the Construction Documents.

**4.5.3 Target Value Design.** Contractor will actively engage with other Project Team Members in the Target Value Design process to provide optimal value and design during each stage of the design process, and to properly coordinate and integrate the various equipment, systems and components to increase ease of construction while controlling cost and schedule. Set Based Design and Choosing By Advantages (as defined in Sections 15.7.1 and 15.7.2) may be used to explore design alternatives and reach decisions during the design process. Cost evaluation during the Target Value Design process should include life cycle cost analysis for systems and equipment being considered, design details as they are being developed, and portions of the construction work that PG&E deems necessary for accurate cost modeling.

**4.5.4 Preliminary Evaluation.** Contractor will cause engineers to provide a preliminary evaluation to PG&E regarding the design and performance criteria and discuss alternative approaches to design and construction taking into account the Budget, value

engineering proposals, lifecycle analysis, and sustainability goals. Proposals for alternative systems, means, methods, finishes, equipment, and the like must satisfy the design and performance criteria and meet the Agreed Program requirements, and result in savings of time or money in constructing, increased sustainability, or improved facilities, operations or maintenance. The Engineer of Record will review all proposals to ascertain design feasibility, satisfaction of the Agreed Program and design concepts, compatibility and compliance with Applicable Laws and code requirements. Contractor and relevant subcontractors will review alternative proposals for constructability, schedule, and cost. PG&E will rely solely on the Contractor's representations about the appropriateness and adequacy for implementation a Capital Improvement Project but proposals on design alternatives will not be incorporated into the Construction Documents without approval of PG&E and the Engineer of Record.

**4.5.5 Cost Evaluation.** Contractor and its subcontractors will provide continual estimating services as often as necessary to support decisions regarding scope, functionality, and design and to help ensure that overall design meets or exceeds the Agreed Program. Consistent cost evaluation will assist Contractor, Engineer of Record, and PG&E in making decisions on design alternatives. If any estimate exceeds previously approved estimates, the Contractor will collaborate with PG&E and other Project Team Members in an effort to reduce the anticipated cost of the Capital Improvement Project. Written approval from PG&E's authorized representative of the cost estimate format and structure is required.

**4.5.6 Life Cycle Analysis.** Contractor will provide alternative equipment and systems to the PG&E for life cycle cost analysis and evaluation of the significant costs of PG&E over the life of each alternative. The analysis will include projected initial cost of the equipment and system, projected yearly operational and maintenance costs, projected life expectancy, estimated replacement cost, and anticipated levels of performance.

**4.5.7 Sustainability Goals.** Contractor will collaborate with the other Project Team Members early during the design process to determine how to achieve any sustainability goals identified in the Agreed Program.

**4.6 Schematic Design Documents.** Upon written receipt of a notice to proceed from PG&E, Contractor will cause the Engineer of Record to prepare Schematic Design Documents based on the Agreed Program. Schematic Design Documents will consist of Drawings, outline Specifications and other necessary documents illustrating the scale and relationship of facility equipment and components and will include a site plan, preliminary layout, sections and elevations for major equipment and systems, as well as line diagrams and proposed equipment schedules based on the design and performance criteria and Agreed Program.

**4.6.1 Reconciliation with Agreed Program and Budget.** Before completing the schematic design documents, Contractor will cause the Engineer of Record to evaluate the programmatic requirements and note any discrepancies between design and performance requirements criteria and the schematic design documents, and request approval and direction from PG&E. Contractor will also prepare an updated cost estimate based on the schematic design documents and will note any slippage in the Schedule. The updated estimate will be compared to the Budget as part of the reconciliation process and submitted to PG&E as part of the approval process. To the extent that there has been a slippage in the Schedule, Contractor will prepare and submit a detailed recovery plans required by Section 7.6 as part of the reconciliation.

4.6.2 PG&E's Approval Process. Contractor will submit and present the schematic design documents as well as a narrative describing how the design will meet the Agreed Program and design and performance criteria with respect to fitness for its intended purpose and use, and the updated cost estimate and Schedule. If PG&E does not approve the schematic design documents, or aspects of the documents, the Engineer of Record will modify the schematic design documents and re-submit for approval.

**4.7 Design Development Documents.** Upon approval of the schematic design documents, Contractor will cause the Engineer of Record to prepare design development documents based on the approved schematic design and any approved adjustments authorized by PG&E. The design development documents must include 60% detailed Drawings, Specifications, and narratives necessary to fix and describe the size and character of the entire Capital Improvement Project or Projects as to design; structural, mechanical, and electrical systems; materials; and such other elements as may be appropriate to allow PG&E to initiate scope compliance review(s).

4.7.1 Reconciliation with Schematic Design Documents and Budget. Before completing the design development documents, Contractor will cause the Engineer of Record to evaluate the programmatic requirements and note any discrepancies between design and performance requirements criteria and the design development documents, and request approval and direction from PG&E. Contractor will also prepare an updated cost estimate based on the design development documents and will note any slippage in the Schedule. The updated estimate will be compared to the Budget as part of the reconciliation process and submitted to PG&E as part of the approval process. To the extent that there has been a slippage in the Schedule, Contractor will prepare and submit a detailed recovery plans required by Section 7.6 as part of the reconciliation.

4.7.2 Peer Review. Contractor will cause the Engineer of Record to prepare the necessary documentation for design review from PG&E and the necessary Governmental Authorities, and to attend all design review meetings as required to obtain approval.

4.7.3 PG&E's Approval Process. After peer review, the Engineer of Record will make any necessary revisions or adjustments and then Contractor will submit and present the design development documents to PG&E for approval along with an updated cost estimate and Schedule. If PG&E does not approve the design development documents, or aspects of the documents, the Engineer of Record will modify the design development documents and re-submit for approval.

**4.8 Construction Documents.** Upon approval of the design development documents, Contractor will cause the Engineer of Record to prepare Construction Documents based on the approved design development documents and any approved adjustments authorized by PG&E. The Construction Documents will consist of final Drawings and Specifications setting forth in detail all necessary requirements for proper construction of the Capital Improvement Project or Projects. The Construction Documents will describe the quality, configuration, size, functionality, performance, and relationships of all materials, equipment, and components to be incorporated into the Capital Improvement Project or Projects.

4.8.1 Peer Review. The Engineer of Record will submit Construction Documents for back check and compliance review to PG&E, as well as submission to the necessary Governmental Authorities for which approval is required. The Engineer of Record



will continue to re-submit the documents until written approval is obtained from PG&E and the necessary Governmental Authorities.

**4.8.2 Reconciliation.** Before completing the 100% Construction Documents, the Engineer of Record and Contractor will evaluate the programmatic requirements and note any discrepancies between the design and performance criteria and Agreed Program and the Construction Documents (that have not been previously noted), and request approval and direction from PG&E. Contractor and its subcontractors will also prepare an updated cost estimate based on the Construction Documents demonstrating that the construction work can be completed within the approved Budget, and will note any slippage in the Schedule. To the extent that there has been slippage in the Schedule, Contractor will prepare and submit a detailed recovery plan as required under Section 7.6 as part of the reconciliation.

**4.8.3 Submission of Signed and Stamped Construction Documents.** In order to obtain necessary permits and to comply with professional registration statutes, 2D Drawings, calculations and Specifications must be generated, reviewed, sealed, and submitted to reviewing Governmental Authorities. The Engineer of Record will sign and stamp the Drawings, Specifications, and calculations. By signing and sealing the Construction Documents, the Engineer of Record warrants that the design portion of the Services are complete, coordinated, accurate, and contain directions that will enable construction of the Capital Improvement Project or Projects.

**4.8.4 Permits and Approvals.** Contractor will submit all documentation required for permit and assist PG&E in obtaining a permit for construction.

**4.8.5 Substitutions.** Once the Construction Documents are approved by the Governmental Authorities and PG&E no substitutions will be allowed unless: (i) the specified materials or equipment have been discontinued; or (ii) the PG&E has approved the substitution, in writing, after receiving advise from the Engineer of Record. The Engineer of Record and PG&E will review all substitutions requests properly submitted for overall conformance with the design intent expressed in the Construction Documents. Only substitutions approved by PG&E will be incorporated into the Construction Documents. Substitutions that are included in the Work but not approved will be deemed non-conforming construction work and subject to correction per Article 17.

#### **4.9 Capital Improvement Contract Administration Phase**

**4.9.1 Supervision.** Contractor will provide a qualified superintendent at the site to properly supervise and direct all employees, subcontractors (inclusive of all tiers) and their agents and employees, and other persons performing any construction work at the site, and to ensure that the construction work is carried out in accordance with the Contract Documents. The superintendent must be able to read, write, and verbally communicate in English. The superintendent may not be removed from, or added to, the Capital Improvement Project without prior written consent from PG&E except for death, disability, or departure from employment. If a replacement is necessary, the proposed superintendent will have equal or better qualifications than the former superintendent, and all candidates are subject to final approval by PG&E.

**4.9.2 Discipline.** Contractor will at all times enforce strict discipline and good order among its employees and will not employ any unfit or unskilled persons or entities on the Capital Improvement Project. Contractor and its design professionals (if any) and

subcontractors (inclusive of all tiers) will comply with all PG&E policies and procedures throughout the duration of the Capital Improvement Project.

4.9.3 Coordination of Construction Work. Before starting each portion of the construction work, the Contractor will: (i) review and compare the various Contract Documents relative to that portion of the construction work, as well as the information furnished by the other Project Team Members that may affect proper installation; (ii) field measure existing conditions related to that portion of the construction work; and (iii) observe any conditions at the site directly affecting that portion of the construction work.

(a) Field Engineering. The Contractor will establish all required reference points and benchmarks at the site, and if a building is constructed as part of the Capital Improvement Project, establish building lines and elevations, check for building framing plumbness, and establish on building frame the required basic grid lines. The Contractor will locate and protect control points before commencing the construction work, and preserve permanent reference points during construction. The Contractor will be responsible for replacing any control points that are lost or destroyed.

(b) Utilities. The Contractor will verify the location and depth (elevation) of all existing utilities and services before performing any excavation at the job site.

(c) Coordination of MEP. Mechanical, electrical, plumbing, fire protection, and fire and life safety work will be coordinated through the BIM, as appropriate, to avoid obstructions, preserve head room, keep openings and other passageways clear, overcome interference with structural, framing, and equipment conditions, and coordinate with other trades.

(d) Fixtures, Furnishings and, Equipment. The Contractor will timely procure all fixtures, furnishings, and equipment in a manner consistent with the deadlines and requirements established by PG&E and set forth in the most current, approved Schedule.

(e) Maintenance of Records. The Contractor will maintain at the site for PG&E one record copy of the Agreed Program, the Construction Documents, the approved design development documents, all permits and permit drawings, the BIM, all addenda, approved Submittals, Change Orders and other modifications, and RFIs in good order and marked currently to record changes and selections made during design and construction. The Contractor will maintain records in duplicate, to the extent applicable, of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations certified by a qualified surveyor or professional engineer. All records will be available in the Contractor's jobsite office and will be delivered to PG&E before Final Completion along with any other required close-out documentation required by the Contract Documents.

4.9.4 Submittals. Subcontractors will timely submit all Submittals required by the Contract Documents to the Contractor for coordination and review prior to submitting them to the design professional who is responsible for that specific design discipline (with a copy to the Engineer of Record), and in accordance with the most current, approved Submittal schedule avoiding delays in the Work or in the activities of other Project Team Members performing work or services. Each Submittal will be prepared by the responsible subcontractor (inclusive of all tiers) or supplier in accordance with the Contract Documents to demonstrate the construction means and methods proposed for installation of systems or components in a coordinated manner with other contiguous work and consistent with the design expressed in the



Construction Documents. Contractor will not submit any shop drawing that is merely a tracing or copy of any of the Construction Documents. Each Submittal will be prepared by the responsible subcontractor (inclusive of all tiers) or supplier in accordance with the Contract Documents. Any submittals that are not required by the Contract Documents may be returned by the appropriate design professional without action.

(a) Submittal Scheduling. The Contractor will provide a schedule that complies with PG&E's milestone requirements and indicates when submittals will be issued and when approval must be received to allow for proper procurement of materials and equipment and to avoid delays in the Work. Disputes regarding the submittal schedule will be resolved in accordance with the dispute resolution procedures in Article 27.

(b) Review. The Engineer of Record and other appropriate design professionals will review the Submittals for conformance with the Construction Documents or design and performance Criteria (for design-build trade work, if any), and approve or take other appropriate action. PG&E may also review Submittals, and PG&E reserves the right to have peer review. However, regardless of the review process, the Contractor will remain responsible for all of its design services and approval of a Submittal does not relieve the Contractor or submitter from any of its contractual obligations. If any Submittal is returned without approval, the rejecting party will discuss with the submitting party the reason for rejection and describe the necessary modifications. The Contractor will require its subcontractor (inclusive of all tiers) or supplier to make the necessary corrections and furnish corrected resubmissions to the Engineer of Record and other appropriate design professionals within 1 week or less, for approval. No Construction Work will be performed for which the Contract Documents require a Submittal until the respective Submittal has been approved. All approved Submittals must be posted on the Project's portal, and available in the Project office.

(c) Design-Build Subcontractors. Submittals prepared by design-build subcontractors must be prepared by, or under the responsible charge of, a professional engineer or architect registered or licensed in accordance with Applicable Law who will sign and seal all design-build Submittals indicating that the design professional is the engineer or architect of record. Submittals will be in accordance with the provisions set forth in Section 4.9.4. Design-build subcontractors will remain liable and responsible for all design-build Submittals. The Engineer of Record and other design professionals will review design-build Submittals to confirm that the Submittals are in general conformance with the design criteria and Construction Documents, and to coordinate the design-build Submittals with the design prepared by other design professionals.

4.9.5 Site Logistics. The Contractor, in collaboration with the PG&E representative identified in the CWA, will develop a site logistics plan for PG&E approval. The site logistics plan will identify areas of the site that will be used for trailers, deliveries, staging, ingress, egress, etc. The site logistics plan will be incorporated as an Exhibit to the CWA.

4.9.6 Layout and Protection. The Contractor is responsible for all layouts and will preserve and protect all line and grade benchmarks. Any additional surveying or layout caused as a result of Contractor or any of its subcontractors (inclusive of all tiers)' failure to take the necessary precautions to protect the data will be performed at Contractor's own cost and expense.

4.9.7 Materials and Equipment. Storage of equipment and materials will be coordinated through the PG&E representative identified in the CWA. Contractor will maintain, or

cause its subcontractors (inclusive of all tiers) to maintain, all storage areas and will keep storage areas clean, safe, and secure. Any materials or equipment stored off-site will be insured or stored in a bonded warehouse unless Contractor and PG&E representative agree that materials and equipment can be safely stored on-site. The risk of loss will remain on the Contractor for material and equipment stored off-site.

4.9.8 Long Lead Items. The Contractor will collaborate with the other Project Team members to establish a program to expedite order and delivery of materials and equipment in a timely manner and consistent with the most recent, approved Schedule.

4.9.9 Shipment and Deliveries. Before shipment, delivery, and installation of materials and equipment, Contractor will verify the stage of completion of the Project with the PG&E representative identified in the CWA to determine the availability of facilities for access, delivery, transportation, and storage, and to correlate these observations with the requirements of the Contract Documents. All shipments and deliveries will be scheduled and coordinated in accordance with the most current, approved site logistics plan and the most current, approved Schedule.

4.9.10 Cutting and Patching. Contractor will be responsible for all cutting, fitting, or patching required to complete the construction work or to make its parts fit together properly. The Contractor will not damage or endanger any portion of the construction work, or fully or partially completed construction work, by cutting, patching, or otherwise altering the construction. The Contractor will not cut or otherwise alter the construction by PG&E's separate contractors except with the prior written consent of the PG&E representative identified in the CWA. PG&E will not unreasonably withhold its separate contractors' consent to cutting or otherwise altering such construction work.

#### **4.10 Testing, Commissioning, and Turn-Over Phase**

4.10.1 Mechanical Completion. Upon satisfaction of all requirements for Mechanical Completion, Contractor will provide PG&E with a notice of Mechanical Completion. Within 10 business days of receipt of notice, PG&E will notify Contractor in writing whether or not Contractor has fulfilled the requirements of Mechanical Completion. If Contractor has not fulfilled the requirements for Mechanical Completion, PG&E will specify to Contractor in writing the reasons why the requirements for Mechanical Completion have not been met. Contractor will promptly act to correct the deficiencies as soon as possible, but no later than the milestone date for Mechanical Completion set forth in the most current, approved Schedule; provided that such date has not already passed. Following any remedial action, Contractor will deliver to PG&E a new notice of Mechanical Completion and the provisions of this Section 4.10.1 will apply with respect to the new Mechanical Completion notice in the same manner as they applied to the original Mechanical Completion notice.

4.10.2 Performance Tests. All Performance Tests conducted by Contractor will be in accordance with the Contract Documents, applicable manufacturers' instructions and warranty requirements, Applicable Laws, applicable permits, Good Engineering and Construction Practices, and any and all applicable rules. No Performance Tests will be performed unless the Capital Improvement Project (i) has achieved Mechanical Completion, (ii) is capable of being energized and operated safely, reliably, and continuously in accordance with the requirements of the Contract Documents at all operating conditions and modes specified therein (although minor portions of the Capital Improvement Project not essential to its safe, continuous, and reliable operation may remain to be completed), and (iii) is ready for the

Performance Tests to be performed in accordance with the Contract Documents. PG&E and its authorized representatives will have the right to inspect the Work and to be present during the Performance Tests.

(a) Notice. Before conducting any Performance Test, Contractor will deliver to PG&E a written notice ("Test Notice") specifying a date(s) for commencement of the tests. Contractor will deliver a Test Notice at least 10 business days before commencement of any test. Within 5 business days' notice, PG&E will deliver to Contractor a written notice (i) accepting the Test Notice or (ii) denying that the prerequisites for performing the test have been completed and stating the facts upon which such reasonable denial is based. Upon receipt of notice, Contractor will take appropriate action to remedy the conditions described in the notice from PG&E. Following any remedial action, Contractor will deliver to PG&E a new Test Notice conforming to the requirements of this subsection (a), and the provisions of this subsection (a) will apply with respect to the new Test Notice in the same manner as they applied with respect to the original Test Notice.

(b) Process. If requested by PG&E, Contractor will ensure that each applicable subcontractor (inclusive of all tiers) and supplier will provide an on-site representative to assist in coordination, startup, and commissioning of equipment. Subcontractors' and suppliers' test facilities will be subject to review by Contractor and PG&E prior to testing. Contractor will ensure that its subcontractors (inclusive of all tiers) and suppliers properly protect all equipment to prevent damage during testing. Contractor and its subcontractors (inclusive of all tiers) and suppliers will bear all repair or replacement costs of any item damaged, directly or indirectly, as a result of any tests. No later than 10 business days following completion of required Performance Tests, Contractor will cause each applicable subcontractor (inclusive of all tiers) and supplier to furnish the original material and test records and, for record purposes, certified reports showing test results. Once the Capital Improvement Project, or Projects, achieve the performance guarantees required by the Contract Documents, Contractor will, upon satisfaction of the other requirements for achieving Substantial Completion, submit a notice of Substantial Completion in accordance with Section 4.10.4. If the Capital Improvement Project or Projects fail all or any part of the Performance Tests, Contractor will take appropriate corrective action and the Performance Tests will be performed again until such time that the equipment successfully passes all required testing. If Contractor fails to achieve the performance guarantees and satisfy all of the other requirements for achieving Substantial Completion within the Contract Time, Contractor will pay liquidated damages in accordance with Section 7.9.

(c) Maintenance. Contractor will provide maintenance for all systems and equipment at its own costs and expense until Substantial Completion.

4.10.3 Punch-List. When Contractor considers that the Work, or a PG&E designated portion of the Work, has reached Substantial Completion, Contractor will prepare a Punch List for submission to PG&E. Failure to include any items on the Punch List will not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. PG&E has the right to add items to the Punch List from time to time before Final Completion. Upon request of PG&E, the Parties will reasonably agree upon the commercial value of all items on the Punch List that have not been completed. The Parties agree that with respect to Punch List items that remain incomplete and which are preventing Final Completion, it may be more expedient for PG&E to complete such Punch List items, at its election and option. If the Parties are able to agree upon the commercial value of all items on the Punch List, and PG&E so elects, at its sole discretion, PG&E may, in lieu of requiring Contractor to

complete the Punch List items, require Contractor to pay to PG&E the agreed commercial value of the remaining Punch List items. PG&E will have the right to offset such amount owed by Contractor against any amounts owed by PG&E to Contractor at Final Completion, or otherwise under the Contract Documents.

4.10.4 Substantial Completion. A Capital Improvement Project, or Projects, will not be considered to have reached Substantial Completion until all of the following conditions are satisfied: (i) completion of the Work for a Capital Improvement Project in accordance with the permitted Construction Documents; (ii) all systems included in the Work have achieved Mechanical Completion and all Performance Tests have been successfully completed; (iii) receipt of approval by those Governmental Authorities having jurisdiction over inspections and substantial completion of the Capital Improvement Project certifying that the Capital Improvement Project is capable of being placed in service (iv) instruction and training by Contractor of PG&E's personnel in the use, operation, and maintenance of all systems and equipment has been completed; and (v) all final finishes within the Contract Documents are in place. Upon Substantial Completion, Contractor will certify that the only remaining construction work will be minor in nature, so that PG&E can occupy and fully utilize the Capital Improvement Project, or Projects for the intended purpose. As a further condition to Substantial Completion, Contractor will certify that all remaining construction work will be completed within 30 days after Substantial Completion.

(a) Partial Occupancy. PG&E may occupy or use any completed or partially completed portion of the Capital Improvement Project (or Projects) at any stage when authorized by Governmental Authorities. Such partial occupancy or use may commence whether or not the portion has reached Substantial Completion, provided that if occupancy commences prior to Substantial Completion, then prior to such occupancy PG&E and Contractor will have first accepted in writing the responsibilities assigned to each of them for payments, release of retention (if any), security, maintenance, heat, utilities, damage to the construction work, and insurance, and will have agreed in writing concerning the period for completion and/or correction of the construction work and commencement of warranties required by the Contract Documents. If partial occupancy is requested by PG&E after Substantial Completion of a part of the Capital Improvement Project (or Projects), when Contractor considers the portion PG&E desires to occupy to have reached Substantial Completion, Contractor will prepare and submit a Punch List to PG&E for review and inspection of the partially completed Work. Immediately prior to partial occupancy or use, PG&E and Contractor will jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Partial occupancy or use of a portion or portions of the Work does not constitute acceptance of Work not complying with the Contract Documents. PG&E's use of the Project for installation of furniture, fixtures, and equipment either with its own forces or with other contractor's forces will not be subject to this Section 4.10.4(a).

(b) Certificate of Substantial Completion. Once the Capital Improvement Project (or Projects) has achieved Substantial Completion, PG&E will prepare a certificate of Substantial Completion establishing the date of Substantial Completion, designating PG&E and Contractor's responsibilities for security, maintenance, heat, utilities, damage to construction work, insurance, and correction of the items listed on the Punch List, and fixing the estimated cost to complete all the items on the Punch List.

4.10.5 Final Completion and Acceptance of Capital Improvement. Contractor will achieve Final Completion of all the Work and the Punch List within 30 days after Substantial Completion.

4.10.6 Close-Out Documentation and Spare Parts. Before Final Completion of a Capital Improvement Project (or Projects), Contractor will transmit to PG&E an electronic copy and 1 hard copy of all correct as-built Drawings, the BIM (if applicable), operation and maintenance manuals, references, all warranties, spare parts, etc., as required by the Specifications and other Contract Documents.

(a) Contractor will redline one set of Construction Documents throughout the construction process on a daily basis with all corrected as-built dimensions and information. Unless otherwise specifically required in the Specifications, all as-built data will be located by GPS. During construction, as-built Drawings must be available to PG&E at the job site at all times.

(b) Contractor will also create a record set for each Capital Improvement Project of the Construction Documents documenting subsequent changes, and based on the as-built conditions. The record set updates will be made to the 2-D documents, as well as the specified level of the BIM (if applicable).

## 5. SAFETY

**5.1 Contractor Obligations.** Safety is of paramount importance in the performance of the Work and Services. Contractor is solely responsible for performing the Work and Services in a safe manner. Contractor will plan and conduct the Work and Services, and must require all subcontractors (inclusive of all tiers) to perform the Work and Services, in accordance with Contractor's safety program, Applicable Law, and safety and health rules, standards, and practices. Work performed adjacent to electrically energized facilities and/or operating natural gas facilities shall be performed according to Applicable Law and safety rules and standards for Work performed on energized and operating facilities. Contractor will provide necessary training to its employees and subcontractors (inclusive of all tiers) to inform them of all applicable safety requirements.

**5.2 PG&E's Safety Program.** Contractor represents and warrants that it will perform all applicable Work and Services, and cause all subcontractors (inclusive of all tiers) to perform all applicable Work and Services, in compliance with PG&E's Contractor Safety Program Standard Contract Requirements, as may be modified from time to time. The Contractor Safety Program Standard Contract Requirements can be located and downloaded at: [www.pge.com/contractorsafety](http://www.pge.com/contractorsafety) and are hereby incorporated by reference into this Contract. Contractor's failure to comply with the Contractor Safety Program Standard Contract Requirements will be immediate grounds for termination for cause under the MSA and all applicable CWAs. Notwithstanding the above, Contractor is the "controlling employer" as defined under CalOSHA and will remain responsible for all fines and liability arising from violation of the Contractor Safety Program Standard Contract Requirements and Applicable Law.

**5.3 PG&E's Rights.** PG&E reserves the right to inspect the Work and Services to ensure compliance with reasonable and safe work practices and with all Applicable Law. If PG&E at any time observes Contractor, or any of its subcontractors (inclusive of all tiers), performing the Work or Services in an unsafe manner, or in a manner that may, if continued,



become unsafe, then PG&E may require Contractor to stop the performance affected by the unsafe practice and not continue until it can be completed safely. PG&E may designate safety precautions in addition to those in use or proposed by Contractor. PG&E's rights under this section shall not relieve Contractor of the sole responsibility to maintain safe and efficient working conditions.

## **6. COMPENSATION**

**6.1 Contract Price.** Compensation to be paid Contractor by PG&E will be the Contract Price set forth in the CWA based on one of the compensation models set forth in this Article 6. The Contract Price will also include any price adjustments based on fully executed Change Orders. Except for items specifically excluded, all Services or Work described in the Contract Documents will be considered as included in the Contract Price whether or not specifically itemized in the Contract Price Breakdown, which will be an Exhibit to the CWA.

**6.1.1 Allowances.** Contractor will include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances will be supplied for such amounts and by such persons or entities as PG&E may direct, but Contractor will not be required to employ persons or entities against which Contractor makes reasonable objection. Unless otherwise provided in the Contract Documents:

(a) Materials and equipment under an allowance will be selected by PG&E so as to avoid unreasonable delay in the Work;

(b) Allowances will cover the cost to Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

(c) Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts will be included in the Contract Price and not in the allowance; and

(d) Whenever costs are more than or less than the allowance amount, the Contract Price will be adjusted accordingly by Change Order per Article 8.10.

**6.2 Consulting Services Other Than EPC.** Unless otherwise specified in the CWA, for the portion of Services other than the Work, Contractor will be compensated by PG&E for the actual cost of the Services performed up to the not-to-exceed amount set forth in the CWA. The actual cost will be determined based on billable Services plus the actual cost for the applicable reimbursable expenses categorized below in Section 6.4. All other costs and expenses are excluded and Contractor will not be compensated for additional services unless the additional services are approved in advance by PG&E through executed Change Order. If Contractor is subcontracting a portion of its Services to other engineers or consultants, their billable rates will be subject to the same terms and conditions and those individuals must also be included in Contractor's RLWP, billable rates, and not-to-exceed amount.

**6.2.1 Billable Amount.** Contractor's billable amount includes the sum of the agreed billable rates (inclusive of overhead, burden, and profit) multiplied by the number of hours spent performing the Services. The agreed billable rates will be included in Attachment 3 to the MSA, and the not-to-exceed billable amounts will be included as an Exhibit to the CWA and broken down by phase of Service as described in Sections 4.1 through 4.4.

**6.2.2 Agreed Billable Rates.** The Contractor and its engineers, consultants, and employees will be charged based on the agreed billable rates set forth in Attachment 3 to the MSA. The agreed billable rates must be effective for the term of the MSA, and will include any annual adjustments to the billable rates during the 5 year term. To the extent that engineers and consultants are unknown at the time of execution of the MSA, their respective agreed billable rates will be negotiated by Contractor and approved by PG&E before subcontracting. The additional agreed billable rates will be effective for the duration of the Capital Improvement Project or Projects as defined in the applicable CWA, and will include any annual adjustments to the agreed billable rates given the duration of the Services, which will be specifically set forth in an Exhibit to the CWA. No salaried employee is allowed to bill more than 40 hours per week unless express written consent is provided by PG&E. PG&E's approval of additional time will not in and of itself constitute an increase in the not-to-exceed amount set forth in the CWA. The agreed billable rates will be based on a 2,080-hour work year and will be computed using the employee's direct salary expense times the agreed multiplier for overhead, burden, and profit.

(a) Direct salary expense is the actual salaries paid to Contractor's and its engineers and consultants (if applicable) proposed staff members inclusive of employer benefit payments for health insurance (net of employee contribution withholding), long term disability, sick leave, 401K, pensions and vacation, holidays, Social Security (FICA), Medicare (FMI), unemployment insurance (FUI & SUI), and workers compensation. Discretionary incentives and bonuses are considered part of overhead and burden. Salaried personnel cannot bill for days when they are not working on the Capital Improvement Project or Projects including sick time, vacation days or holidays.

**6.2.3** The agreed billable rates include the amount paid to employees as wages, including customary benefits (health insurance, long term disability, sick leave, pension, and vacation accruals) and taxes plus overhead, burden, and profit. Designer's overhead, burden, and profit include, among other things: (i) profit for the Services rendered; (ii) salaries and other compensation of all home office personnel who are not directly assigned to the Capital Improvement Project or Projects; and (iii) home office general expenses including rent, utilities, costs for computers (including hardware, servers, plotters, printers and software), cell phone charges, internet access, digital cameras, postage, office supplies, equipment, etc.

**6.3 Compensation Model for Engineering and Construction.** Contractor will price the Work in accordance with the pricing model or models selected by PG&E in the CWA. The available pricing models are described in Sections 6.3.1 through 6.3.5 below.

**6.3.1 Lump-Sum.** If the CWA indicates that Contractor will be compensated on a lump sum basis, PG&E will pay Contractor the fixed amount set forth in the CWA for completion of the Work in accordance with the Contract Documents. The mutually agreed lump sum amount will be properly itemized in a Lump Sum Breakdown representing its initial Contract Price, which will be attached to the CWA as an Exhibit, and must include a detailed itemization of all costs for labor, material, equipment and appurtenances based on the scope of the Work plus separate line items for allowance items, related taxes, insurance, security for performance, Contractor's contingency, and mark-up for overhead, burden, and fee. Absent a fully-executed Change Order, Contractor will not be entitled to any additional compensation above the lump sum amount for performing the Work.

**6.3.2 Time and Materials.** If the CWA indicates that Contractor will be compensated on a time and material basis, PG&E will pay Contractor for the actual time spent

to complete the Work as described in the Contract Documents multiplied by the approved billable rates for Contractor's staff and actual field labor rates (as applicable), plus the actual cost for materials and equipment, and Contractor's agreed mark-up for overhead, burden, and profit. The agreed billable rates that Contractor charges for its staff and field labor rates will be set forth in Attachment 3 to the MSA. Contractor will keep and present an itemized accounting for the cost of the Work performed based on daily time tickets executed by PG&E's site representative, material and equipment invoices, and other supporting data substantiating the amount requested. All time and material costs will be broken down by labor, materials, equipment, general conditions (for Contractor's staff time), general requirements (for temporary office, facilities, and equipment that is not incorporated into the Work), and mark-up for overhead, burden, and profit. The agreed amount for overhead, burden, and profit will be set forth in the CWA.

6.3.3 Unit Cost. If the CWA indicates that Contractor will be compensated on a unit cost basis, Contractor's Contract Price will be based on the number of units that it takes the Contractor to complete the Work per the Contract Documents under the applicable CWA. The applicable unit costs will be included in an Exhibit to the CWA and must include all associated labor, materials, equipment, general conditions (for Contractor's staff time), general requirements (for temporary office, facilities, and equipment that is not incorporated into the Work), and mark-up for overhead, burden, and profit.

6.3.4 Guaranteed Maximum Price. If the CWA indicates that Contractor will be compensated on a guaranteed maximum price basis ("GMP"), the Contractor will guarantee that the cost to complete the Work in accordance with the Contract Documents will not exceed the stated GMP, subject to adjustment for approved Change Order. The GMP will include the Contractor's reimbursable costs of the Work as described in Section 6.4 plus its fee (overhead, burden and profit plus any other non-reimbursable expenses). The GMP will be properly itemized in a GMP Breakdown representing its initial Contract Price, which be attached to the CWA as an Exhibit and include any qualifications and assumptions. The GMP Breakdown will be itemized based on the scope of the Work described in the CWA and will include separate line items for any allowances, general conditions, general requirements, contingency, taxes, insurance, security, overhead, burden, and Fee. Any costs which would cause the GMP to be exceeded will be paid solely by the Contractor.

(a) Engineering Services. All design services must be included in a separate line item in the GMP. Engineering services will be compensated in the same manner as consultants under Section 6.2

(b) Construction Work. The Work will itemized into separate line items by trade, as well as separate line items for general conditions, general requirements, taxes and security (if applicable).

(c) Contingency. Contingency must be included in a separate line item of the GMP and may be used to cover unanticipated field conditions that do not constitute an Unforeseen and Differing Site Condition, re-sequencing of the Work for the good of the Capital Improvement Project, or acceleration in the most current, approved Schedule for improvement in the overall Contract Time. Contingency will not be used for any of the Change Order conditions. Use of the Contractor's contingency will be transparent and subject to PG&E approval, which will not be unreasonably withheld. Upon approval, Contractor will transfer the amount of contingency used into the appropriate line item. All unused contingency will be considered part of the shared savings under subparagraph (f).



(d) Allowances. The GMP will include appropriate allowances per Section 6.1.1 for those items, components, and/or systems that are anticipated to be included in the Work but require further design criteria before pricing can be finalized. The allowance items will be specifically identified in separate line items in the GMP. Upon procurement, the allowance will be reconciled through additive Change Order for overage amounts. All unused allowance amounts will accrue 100% to PG&E through deductive Change Order.

(e) Fee. A Fee is included in the GMP for Contractor's profit, as well as those non-reimbursable expenses defined in Section 6.4.7. Contractor's Fee will either be a fixed sum or based on an agreed percentage multiplied by the reimbursable expenses described in Sections 6.4.1 through 6.4.5.

(f) Shared Savings. PG&E is providing a shared savings incentive for Contractor to encourage collaboration with PG&E and other Project Team Members and contribution to the overall efficiency and economic success of a Capital Improvement Project or Projects. If upon Final Completion, the Contract Price is less than the GMP, PG&E will share in the saving 50% to Contractor and its team members and 50% to PG&E unless the CWA includes specific savings participation percentages that are different. The shared savings will be calculated after reconciliation of all allowance items by subtracting the final Contract Price from the GMP. Payment of the shared savings amount earned during construction (if any) will be made with final payment.

6.3.5 Target Cost. If the CWA indicates that Contractor will be compensated on a target cost basis, the Contractor and its key consultants and subcontractors will each place 100% of their profit at risk, and will only earn profit if the Work as described under this CWA is completed within the agreed Target Cost. The Target Cost will include all reimbursable costs for design and construction and will be properly itemized in a Target Cost Breakdown, which will be attached to the CWA as an Exhibit (inclusive of any qualifications and assumptions). The Target Cost Breakdown will be itemized based on the scope of the Work described in the CWA and will include separate line items for any allowances and contingency. Contractor's and each of its participating key consultants' and subcontractors' profits will be placed in the Profit Distribution Spreadsheet Exhibit to the CWA, and will be disbursed on a pro-rata basis in accordance with the terms of the CWA. With respect to payment, Contractor will prepare a Schedule of Values based on its Target Cost Breakdown and include a separate line item for profit held at risk until earned.

(a) Milestone Distributions. A portion of the profit may be distributed at agreed milestones provided the conditions set forth in subsection (i) below are met. The milestones will be mutually agreed to by the Parties and set forth in the CWA. When a milestone is achieved, the Contractor, in collaboration with its key consultants and subcontractors will prepare a milestone estimate that: (i) is current as of date of milestone achievement; (ii) contains all elements and costs that are included within the Target Cost Breakdown; (iii) is based on the actual incurred reimbursable costs plus the estimated cost to complete the Work; and (iv) includes a statement as to whether the Work is estimated to achieve Final Completion within the Contract Time. PG&E reserves the right to have any milestone estimate vetted by an outside, independent consultant provided that the cost estimate prepared by the independent consultant follows the same structure as the Target Cost Breakdown.

(i) Conditions. Based on the approved milestone estimate, PG&E will determine whether (1) the Work is estimated to achieve Final Completion within the Contract Time and (2) whether the estimated final cost is less than or equal to the Target Cost.

(1) If both pre-conditions are true, then the milestone payment will be paid in accordance with the Profit Distribution Spreadsheet Exhibit attached to the CWA as part of a progress payment along with the reimbursable expenses for that period, and Contractor will pay its key consultants and subcontractors who have also placed profit at risk their respective pro-rata share.

(2) If either or both of the payment pre-conditions are not met, then the scheduled milestone payment will be deferred, and not paid. If at a later milestone, both pre-conditions are met, the milestone payment will include the scheduled milestone payment plus the deferred milestone payment or payments.

(3) All milestone payments are subject to the claw-back provisions set forth in subsection (b) below.

(4) Increases to the profit due to Change Orders as determined under the CWA are not included in milestone payments, but are only paid at Final Completion of the Work.

(b) Claw-Back. If, at any time during performance of the Work, a milestone estimate exceeds the Target Cost, as adjusted, then the previously disbursed profit amounts will be deducted from the current reimbursable expenses due and owing to Contractor and its participating key consultants and subcontractors until PG&E has been reimbursed up to the amount of the overrun. To the extent that the previously disbursed profit does not cover the cost overrun, PG&E will only continue to pay reimbursable expenses and the profit will be reduced dollar for dollar to cover the amount of the overrun. If the final actual cost as determined under subsection (c) below of the Work exceeds the Target Cost, Contractor and its participating key consultants and subcontractors will upon 30 calendar days' written notice reimburse PG&E dollar for dollar for all previously disbursed profit amounts up to the amount of the overrun until all profit is exhausted. If Contractor or one of its participating key consultants or subcontractors is terminated for cause, the terminated party must return all previously disbursed profit amounts, and said amounts will be withheld until Final Completion of the Work and only disbursed to that member if the Work is delivered within the Target Cost.

(c) Determination of Final Actual Cost. After PG&E's receipt of Contractor's affidavit certifying the total reimbursable expenses incurred upon Final Completion of the Work, the Parties will meet to determine the final actual cost.

(1) Allowances. Before determining the final actual cost, all unused allowance funds will be deducted from the Target Cost through Change Order. The actual cost for allowance items that exceed the applicable allowance amount, to the extent not already addressed by Change Order, will adjust the Target Cost upward by the incremental overage through Change Order.

(2) Contingency. When determining the final actual cost, any unused contingency funds will remain in the Target Cost and will be distributed, subject to the conditions set forth in Section 6.3.5(d) below.

(3) **PG&E's Costs.** PG&E's costs will be tracked separately by PG&E and are not included in the Target Cost. However, the following costs incurred by PG&E will be counted towards the final actual cost: (i) costs resulting from damage to the Work itself prior to Substantial Completion caused by Contractor or its participating key consultants and subcontractors, or anyone for whom they are responsible, but only to the extent such costs are not paid by an insurer. This provision captures PG&E costs resulting from damage to the Work; (ii) PG&E costs to third parties necessary for the completion of the Work, such as permitting agencies, inspectors, testing labs, or geotechnical consultants, to the extent those costs result from an error, omission, or delay caused by Contractor or its participating key consultants and subcontractors or anyone for whom they are responsible; (iii) PG&E costs to satisfy insurance deductibles or self-insured retentions, or retained amounts to cover potential Claims as described elsewhere in the MSA and applicable CWA.

(d) **Final Profit Adjustment.** The final profit adjustment is based on a comparison of the final actual cost as determined under subsection (c) above to the final Target Cost as follows.

(1) If the final actual cost is at or below the Target Cost, Contractor and each of its participating key consultants and subcontractors will earn their respective profit based on their pro rata share included in the profit distribution spreadsheet set forth in an Exhibit to the CWA. If the Parties agree to share savings, the shared savings distribution will be included in the CWA and any amounts due to the Contractor and its participating key consultants and subcontractors will be disbursed in accordance with the terms in the CWA.

(2) If the final actual cost exceeds the Target Cost, the profit will be reduced pursuant to the claw-back provision set forth in subsection (b) above. If the profit is not exhausted, Contractor and each participating key consultant and subcontractor (inclusive of all tiers) will receive their respective portion of the remaining profit based upon their pro rata share included in the Profit Distribution Spreadsheet Exhibit set forth in the CWA. If all profit is exhausted, PG&E will pay Contractor and its participating key consultants and subcontractors for all reimbursable expenses incurred through Final Completion of the Work.

**6.4 Reimbursable and Non-Reimbursable Expenses.** Reimbursable costs for consulting services under Section 6.2, Change Orders per Article 9, and time and materials (Section 6.3.2), GMP (Section 6.3.4) or Target Cost (Section 6.3.5) compensation models will be limited to the following without any duplicative charge for items that fit into more than one category. Direct costs of the Work include those items set forth in Sections 6.4.1 through 6.4.4. Overhead and burden are described in Section 6.4.5. All other costs are either included in profit or excluded.

**6.4.1 Labor and Services.**

(a) **Engineering and Consultants.** Reimbursable costs for employees performing design or consulting services will be based on the agreed billable rates set forth in Attachment 3 to the MSA and applicable CWA, subject to the provisions in Section 6.2.2. If Contractor is performing Work under the Target Cost model, the agreed billable rates will include overhead and burden but not mark-up for profit. If Contractor is performing Work under the GMP model or for consulting services under Section 6.2, the agreed billable rates will include overhead, burden, and profit. Overhead and burden calculations for rates are subject to the terms and conditions of Section 6.4.5.

(b) Contractor. Reimbursable costs for Contractor's employees will be charged per the agreed billable rates set forth in Attachment 3 to the MSA and applicable CWA. If Contractor is performing Work under the Target Cost model, Contractor and its participating key subcontractors' employees will be charged per the agreed billable rates plus an agreed multiplier for overhead and burden. If Contractor is performing Work under the GMP model, the agreed billable rates will be on direct labor expenses only and will not include overhead, burden, or profit. Overhead and burden calculations for agreed billable rates under the Target Cost model are subject to the terms and conditions of Section 6.4.5.

(c) Field Labor Costs. Field labor costs are limited to hours of labor performed by workers performing construction work on-site or at off-site locations. The labor rates must be inclusive of basic hourly wages, payroll taxes, and employer benefit payments for health and welfare, pensions, vacations/holidays, supplemental dues, and training, plus any other benefits or payments required by law or applicable collective bargaining agreements. The labor costs associated with foremen and lead-men are included in field labor and all self-performed construction work will be compensated as field labor.

(d) General Conditions. General conditions include employee costs for project management, superintending, engineering, safety, accounting, planning and scheduling, purchasing, estimating, and BIM modeler(s) who are specifically assigned to the Work and stationed on-site, but only for that portion of employee time required for the Work.

6.4.2 Consultants and Subcontractor Costs. Payments made by Contractor to consultants or subcontractors per their written agreements unless consultants or subcontractors are also being compensated under the Target Cost model, in which case consultants and subcontractors are subject to the terms set forth in Sections 6.4.1, as well as the other applicable reimbursable costs set forth in this Section 6.4.

6.4.3 Cost of Materials and Equipment Incorporated Into A Capital Improvement Project or Projects. Actual costs for materials and equipment, including transportation and storage of materials and equipment incorporated or to be incorporated into a Capital Improvement Project, or Projects, and including costs of materials in excess of those actually installed to allow for reasonable waste and spoilage, and hand tools (not customarily owned by field labor) that are provided by the Contractor at the site and fully consumed in the performance of the construction work. Unused excess materials, if any, will become PG&E's property at Substantial Completion or, at the PG&E's option, will be sold by the applicable party. Any amounts realized from the sales will be credited to PG&E through the payment application process.

#### 6.4.4 Miscellaneous Costs.

(a) Data Processing and Communications. Cost for copiers, postage, office supplies and equipment. Data processing costs are limited to the cost of computer hardware (including servers and printers) used in handling normal day-to-day administration, management and control at the site, and site internet access. Software license fees incurred specifically for computers used at the site office to the extent purchase is previously approved by PG&E.

(b) Costs for trailers or office space.

(c) Costs for temporary facilities such as power, water, and sanitary.

- (d) Costs for security and fences.
- (e) Costs associated with the safety program directly related to a Capital Improvement Project, or Projects, including temporary protection and barricades, PG&E safety training that is beyond the requirements of Applicable Law, signage, and traffic control.
- (f) Rental Charges. All rental charges for temporary facilities that are provided at the site, whether rented from the Contractor or others, including costs for transportation, installation, minor repairs and replacements, dismantling, and removal. Rates for equipment either owned by the Contractor or an affiliate, or rented, will be subject to the equipment rental terms and conditions approved in advance by PG&E.
- (g) Waste and Recycle Removal. Costs of removal and disposal of debris from the site and recycle costs not offset by recycle fees or rebates.
- (h) Reproduction. Cost for reproducing or printing documents related to the Work.
- (i) Models & Mock-Ups. Costs for physical models and mock-ups requested and approved, in advance and in writing, by PG&E.
- (j) Personal Protective Equipment. Costs for the personal protective equipment required at job site. Contractor is responsible for acquiring and using the personal protective equipment in an appropriate manner.
- (k) Taxes. Sales, use, or similar taxes imposed by a Governmental Authority that are related to the Work.
- (l) Project Insurance. Costs for insurance coverage required under the MSA and applicable CWA, as well as deductibles directly attributable to a Capital Improvement Project, or Projects. Costs for self-insurance will be reimbursable only if the arrangements for self-insurance are first disclosed in writing to PG&E and an agreed methodology for allocating a fair and equitable portion of the actual cost of the self-insurance out-of-pocket costs incurred to settle Claims related to the Work performed is reached.
- (m) Security for Performance. Costs for letters of credit and parent guarantees, or payment and performance bonds, or subcontractor (inclusive of all tiers) default insurance to the extent required by PG&E, or agreed to by PG&E, under the CWA.
- (n) Fees. Fees and assessments for plan check, permits, licenses and inspections, and laboratory tests required by the Contract Documents and that are not paid directly by PG&E.
- (o) Royalties and Licenses. Royalties and license fees paid for the use of a particular process or product required by the Contract Documents and the cost of defending any suits or Claims for infringement of patent rights arising from specific requirements of the Contract Documents that were prepared by PG&E or its separate consultants or contractors and provided that Contractor did not know that the use of the particular design, process, or product was an infringement, and that those portions of the Work were not designed by Contractor or any engineer, consultant performing design services for Contractor or any design-build subcontractors.



(p) Emergencies. Costs incurred in taking action to prevent threatened damage, injury, or loss in case of an emergency that threatens the safety of persons or property.

(q) Lost deposits and other costs incurred in the performance of the Work if and to the extent approved in advance in writing by PG&E.

6.4.5 Travel, Meal, and Lodging Expenses for Consultant Services. If transit time to and from the job site is more than 4 hours, expenditures for travel, food and lodging are allowed as follows. All travel, meal and lodging expenses must be supported by receipts or other documentation sufficient to establish the nature and cost of the expense. Any exceptions must be pre-approved in writing by a PG&E manager.

(a) Lodging expenditures will comply with United States General Services Administration ("GSA") per diem allowance for lodging based upon the zip code of where the lodging expenditure occurred. Contractor's daily expenditures for state and local taxes associated with the lodging expenditure are additional reimbursable expenses to the lodging per diem allowance.

(b) Meals and incidental expenses will be reimbursable as follows.

|                           |      |
|---------------------------|------|
| Continental Breakfast     | \$12 |
| Lunch                     | \$15 |
| Dinner                    | \$29 |
| Total Daily Meal Per Diem | \$56 |

(c) Mileage and transit time, if beyond a 50 mile radius from employee residence to the job site, as well as any motor vehicle expenses, will be reimbursed based upon the GSA vehicle mileage rate in force at the time of travel. The maximum reimbursable mileage is 500 miles per round trip. Reimbursement of labor rates will be allowed for transit time beyond 50 miles starting at Contractor's principal place of business to the job site and return to Contractor's principal place of business. The maximum reimbursement amount for transit time paid may not exceed eight (8) hours.

(d) If Contractor is required to rent a vehicle while performing PG&E authorized Services or Work, the vehicle (compact) must be rented at a daily cost not to exceed \$40 exclusive of all taxes. Gasoline will be reimbursed at actual cost provided that Contractor gases up at a service station before returning the rental car rather than payment through the rental car service. Rental of specialty vehicles such as off-road vehicles that exceed the \$40 per day cost limit require PG&E pre-approval. PG&E will not reimburse for any additional fees or costs, including but not limited to fines, penalties, parking tickets, young driver surcharges and damage to vehicle.

(e) Unless explicitly stated elsewhere, reimbursement of other forms of transit (including bus and rail) will not be allowed for personal commute time for a radius of 50 miles. If PG&E grants an exception for alternative forms of transportation (i.e. long bus or rail rides), Contractor must submit expenses at actual cost. The maximum reimbursement amount for transit time paid shall not exceed 8 hours.

(f) A round-trip coach class airline ticket will be provided to the Contractor's personnel's home residence every 8 weeks while on assignment for PG&E in California. Contractors must make flight selections based on the lowest available airfare and may not make a selection based on personal preference, e.g. airline, type of aircraft, seating preference or frequent flyer program. Airline tickets will not be provided to Contractor's personnel for other destinations besides their home residence.

6.4.6 Overhead and Burden. General home office overhead and burden expenses are chargeable only at the agreed fixed percentages or as may be included in the agreed billable rates and in accordance with Generally Accepted Accounting Principles. The percentages or amounts included in the agreed billable rates include full compensation for any home office personnel who are not directly assigned to the applicable Work or included in the agreed billable rates, as well as any other reasonable home office overhead expenses, and incidental costs such as routine telecommunications, technology fees, copying, electronic mail, facsimile transmissions, and computer time. PG&E may audit overhead and burden records, at its sole discretion. Overhead items that are specifically included in the labor rates set forth in Section 6.4.1 cannot be separately chargeable for overhead under this Section 6.4.5.

6.4.7 Non-Reimbursable Expenses. The following costs are not reimbursable expenses and cannot be included as part of a reimbursable cost.

- (a) Benefits and burdens not expressly included in the agreed billable rates or labor rates.
- (b) Annual bonuses and non-customary benefits of salaried employees.
- (c) All costs of business and/or operating permits, licenses, fees and taxes, required by any Governmental Authorities or labor agreements to enable the Contractor or its subcontractors to be qualified to do business and/or perform work or services.
- (d) Any cost resulting from fraud, willful default or willful misconduct.
- (e) Capital expenses, including interest on its capital employed for the Work.
- (f) Small tools, which include all tools under \$10,000.
- (g) Costs incurred after Final Completion.
- (h) Legal fees, settlements, and/or judgments.
- (i) All other costs not specifically included as a reimbursable expense under Sections 6.4.1 through 6.4.5.

## 7. SCHEDULING

7.1 **Contract Time.** The Contract Time will be specified in the CWA. The Schedule will be tied to the Contract Time and may only be extended through executed Change Order for a permitted delay as described under Section 7.5.

**7.2 Prosecution of the Services or Work.** Contractor will commence Services or the Work when notified to do so by PG&E and will diligently prosecute and complete its Services or Work pursuant to the most current, approved Schedule. Contractor will coordinate its Work with other work and services being performed on the Capital Improvement Project (or Projects) in a manner that avoids delays, obstructions, hindrances, or any interference with the commencement, progress, or completion of the whole or any part of the Services or Work (as applicable), and in accordance with the Contract Time.

**7.3 Commencement.**

**7.3.1 Development.** To the extent that Contractor is providing development phase services as defined under Section 4.1 and more specifically defined under the CWA, the date of commencement of Services will be documented by the notice to proceed issued by PG&E.

**7.3.2 Planning Phase.** To the extent that Contractor is providing planning phase services as defined under Section 4.2 and more specifically defined under the CWA, the date of commencement of Services will be documented by the notice to proceed issued by PG&E.

**7.3.3 Procurement of Engineering and Construction Phase.** To the extent that Contractor is providing procurement of engineering and construction phase services as defined under Section 4.4 through 4.10 and more specifically defined under the CWA, the date of commencement of the Work will be documented by the notice to proceed issued by PG&E.

**7.4 Project Scheduling.** Prior to execution of the CWA, Contractor will prepare and maintain a detailed, resource-loaded schedule in a PG&E standard project management software application in Primavera version 6 using the critical path method ("CPM") that will coordinate and integrate all major portions of the Services or Work and specifically identify all milestones as may be required under the CWA ("Schedule"). The Schedule will be broken down by activity and duration and will be used to identify the sequence of activities and to track time and cost estimates for those activities in order to plan, organize, execute, and monitor the Services or Work. The Schedule will be Contractor's master schedule and will be used to record and report actual performance and progress, and to outline how the Contractor plans to integrate development, planning, engineering, procurement, and construction (as applicable) in order to ensure accurate and timely completion of all Services or Work as defined under the CWA. The Schedule must include sufficient time for PG&E review of planning and engineering documents where approval is required. The Capital Improvement Project (or Projects) will own all float in the Schedule and Contractor will not utilize float suppression techniques or artificial restraints, constraints, lags or durations to lessen or control the amount of total or free float contained in the network.

**7.4.1 Lean Phase Planning.** Lean Phase Plans utilizing pull scheduling techniques (as described in Section 15.6) will be used and must be based on collaborative planning through direct communications by all Project Team Members performing a portion of the Services or Work for a particular phase, who, working backwards from the most current approved Schedule, will create collaborative Lean phase schedules indicating when their portion of the Services or Work will be completed. Direct communications among Project Team Members allows the various parties to make reliable promises to each other, and specifically discuss and negotiate the hand-off criteria or other conditions of satisfaction that are mutually understood and agreed upon.



**7.4.2 Work Plans.** As part of the Lean phase planning, Contractor in collaboration with PG&E and other Project Team Members will establish a work plan to review upcoming design and construction performance requirements and establish the frequency of look ahead meetings and work plan schedules. The work plan schedules will document all Work performed during the prior week's period and project Work to be performed during the next 3 week(s). The work plans are to be used as a working tool to reflect commitments made in look ahead meetings, evaluate any upcoming constraints or schedule slippages, identify workable backlog, and collaborate on methods for labor efficiency. Work flow will be scheduled to optimize the flow of Work and reduce bottlenecks and activities that will not advance the Contract Time or other milestone dates that are included in the Schedule.

**7.5 Delays.** If the Contractor is delayed in the commencement, prosecution, or completion of the Services or Work for one of the conditions set forth in Sections 7.5.1 through 7.5.6, and provided that the delay impacts the critical path and the Contract Time, then the Contract Time may be extended for the duration of the delay less the extent that the delay was also caused by any fault, neglect, act, or omission of the Contractor or its employees, engineers, consultants, subcontractors (inclusive of all tiers), or suppliers or anyone working directly or indirectly for whom such parties may be liable ("concurrent delays"). The Contractor will not be entitled to an extension of time unless PG&E is notified within 5 calendar days of the commencement of the delay, and provided Contractor demonstrates the duration of the delay through fragnet analysis taking into account any concurrent delays and provided that it could not have anticipated or avoided the delay, obstruction, hindrance or interference and has used available means to mitigate or minimize the consequences of the delay. If the Schedule has been amended through Change Order, the delay will be analyzed from the most current, approved, Schedule. Conditions for delay are limited to:

7.5.1 Adverse Weather as defined in Section 1.1.

7.5.2 Force Majeure as defined in Section 1.26.

7.5.3 Unforeseen and Differing Site Conditions as defined in Section 1.52.

7.5.4 PG&E Generated Scope Changes as defined in Section 1.37.

7.5.5 Suspension of the Services or Work by PG&E under Section 28.1.

7.5.6 PG&E Caused Delay as defined in Section 1.36.

**7.6 Schedule Slippage.** The Contractor will notify PG&E within 2 business day of any delay in the most current, approved, Schedule as a result of its Services or Work and must submit a detailed recovery plan to PG&E for evaluation and approval. The Contractor will not be reimbursed for costs associated with any overtime or acceleration measures required to recover lost time due to schedule slippage as a result of Contractor's or its employees, engineers, consultants, subcontractors (inclusive of all tiers), or suppliers' negligence or failure to timely perform their respective portions of the Services or Work.

**7.7 Acceleration.** PG&E may determine that it is in PG&E's best interest to direct Contractor to work overtime in an attempt to recapture delays to the most current, approved Schedule. Acceleration directed by PG&E will be compensated on either an agreed lump sum price or cost reimbursable basis per the conditions set forth in Section 6.4 but only to the extent

that Contractor or its employees, engineers, consultants, subcontractors (inclusive of all tiers), or suppliers were not responsible for the delay.

**7.8 Schedule Updates.** Contractor will provide Schedule updates to PG&E with each monthly invoice as a condition of payment. The Schedule updates will include a detailed variance analysis narrative explaining significant changes in the Schedule and their impact to the Schedule, cost, and scope since the last update. Items will include, but are not limited to, duration changes, logic changes, new activities, milestone changes, Change Order requirements, and any other scheduling elements. The basis of all constraints and lags utilized in the Schedule and subsequent updates must be documented in the schedule narrative. Schedule updates will be produced by Contractor in 2-D and electronic native file format, which must be compatible with existing PG&E tools. Schedule updates are subject to PG&E approval, and the Contract Time will only be adjusted through approved Change Order. If the updated Schedule is not approved by PG&E, Contractor must continue to track and analyze delays based on the most current, approved Schedule.

(a) On a weekly basis Contractor and its subcontractors (inclusive of all tiers) will submit certified payroll documenting a daily record of man-hours worked by each of their respective field labor in order to facilitate PG&E's accounting. The transcript will fully describe the various classes of Work performed in conformance with the applicable classifications set forth in the CWA and the time allotted to each classification with their respective hourly or daily rates.

(b) Using portal access, web access, shared server, or email, Contractor will report to PG&E all current job cost details, Contract Price versus Budget, trended forecast of Schedule and cost and other requirements as requested by PG&E.

(i) If required by PG&E, Contractor will use PG&E's earned value (EV) to report progress and as a standard, objective metric. A hierarchical schedule (Work Breakdown Structure or WBS) and integrated cost plan will be in place with changes to Schedule tightly controlled. Changes to the previously approved Schedule will not be made without written authorization of PG&E.

(1) Contractor will establish tangible, measurable deliverables (work packages) within the hierarchical schedule so that every WBS element has at least one work package and that there is at least one work package completing in an interval specified by PG&E.

(2) Contractor will assign a dollar amount to each work package representing the value of that work package to PG&E. Once PG&E approves the value assigned to each work package the values will be recorded in the Contractor's Schedule of Values. The value of each work package is earned only when the work package has been fully delivered (100% completed and objectively determined) or objectively measured using unit pricing or defined deliverables (e.g. linear feet). Arbitrary percent complete and percent of Contract Price or Target Cost (if applicable) spent are not acceptable forms of progress reporting under earned value. Contractor will use the following formulas for calculating progress of the Work.

- Cost variance (CV) = EV to date less actual costs (AC) to date or  $CV = EV - AC$

- Schedule variance (SV) = EV to date less planned value (PV) of scheduled work or  $SV = EV - PV$
- Estimate to complete (ETC) = expected cost needed to complete all the remaining Work
- Estimate at completion (EAC) = AC to date plus ETC or  $EAC = AC + ETC$
- Variance at completion (VAC) = Budget less EAC or  $VAC = Budget - EAC$ .
- Schedule performance index (SPI) = EV to date divided by PV of scheduled Work or  $SPI = EV / PV$
- Cost performance index (CPI) = EV to date divided by AC or  $CPI = EV / AC$
- To complete performance index (TCPI) = (Budget for all Work less EV to date) divided by (Budget less AC to date) or  $TCPI = (Budget - EV) / (Budget - AC)$ .

(3) Contractor must provide PG&E with notification of the receipt of any goods received within 10 calendar days to ensure timely reporting of goods receipts and accruals to the appropriate departments.

**7.9 Liquidated Damages.** If liquidated damages for Schedule delay are specified in the CWA, PG&E and Contractor acknowledge and agree that if Contractor fails to perform the Services or Work within the Contract Time, PG&E will suffer damages that are both extremely difficult and impracticable to ascertain. Therefore, PG&E and Contractor agree that, in the event Contractor fails to perform the Services or Work within the Contract Time, and if as a result of that delay the Contract Time is extended, Contractor will pay to PG&E as liquidated damages and not as a penalty, the daily amount set forth in the CWA per calendar day until such time that Substantial Completion of the Capital Improvement Project or Projects (as the case may be) is achieved. Payment of liquidated damages represents a reasonable estimate of fair compensation for the losses that reasonably may be anticipated. PG&E and Contractor acknowledge and agree that this liquidated damages provision will be PG&E's only remedy for delay damages caused by Contractor's failure to perform the Services or Work within the Contract Time. Nothing contained in this Section will preclude PG&E from recovery for actual damages caused by reasons other than the Contractor's failure to perform the Services or Work within the Contract Time including, but not limited to, Claims for actual losses incurred due to breach of contract, negligence, defective Work, injury to persons or property, or third party Claims. Contractor acknowledges and agrees that the liquidated damages amount is a reasonable amount for PG&E's consequential damages due to delay under the circumstances existing at the time of the Effective Date of the CWA.

## **8. PAYMENT**

**8.1 Applications for Payments.** Payment applications for all compensation models other than time and materials and unit cost must include a Schedule of Values based on Contractor's breakdown for its initial Contract Price prepared by Contractor in the format agreed to by PG&E. If the Work or Service is for more than 6 weeks, the period covered by each payment application will be one calendar month. If the Work or Service is 6 weeks or less, Contractor will submit one application upon completion of the Work or Service. The payment application will include an itemized breakdown of the cost of the Service or Work (as applicable)

incurred for that particular calendar month, plus the applicable portion of any approved Change Orders, stored materials and equipment, as well as the applicable portion of Fee. The itemized breakdown for design services must include a description of the tasks performed by employee or consultant and the associated hours expended multiplied by the applicable agreed billable rates. Compensation for consultants and subcontractors (inclusive of all tiers) must be similarly itemized and included in the payment application back-up.

8.1.1 Schedule of Values. The Schedule of Values will allocate the initial Contract Price among the various portions of the Work or Services (as applicable) and will include separate line items for consulting services other than engineering, procurement and construction per Section 6.2 (if applicable), cost for design services related to the Work, cost of construction work broken down by trade, allowance items, general conditions, general requirements, insurance, security, contingency, and Fee. Upon approval, the Schedule of Values will be incorporated into the CWA and will be submitted with each application for payment reflecting the value of the Work or Services (as applicable) performed and the percentage of completion. The Schedule of Values will also be used for Schedule updates per Section 7.8.

8.1.2 Consulting Services other than EPC. If Contractor is being compensated for Services other than the Work as described in Section 6.2, the cost of the Service will be in accordance with the reimbursable expenses set forth in Sections 6.4.1 through 6.4.6.

8.1.3 GMP or Target Cost. If Contractor is being compensated under a GMP or Target Cost model as described in Sections 6.3.4 and 6.3.5, the cost of the Work will be in accordance with the reimbursable expenses set forth in Sections 6.4.1 through 6.4.6.

8.1.4 Time and Material. If Contractor is being compensated on a time and material basis per Section 6.3.2, Contractor must submit all daily statements of labor, material, and equipment sheets ("LME") for all Work performed as well as certified payroll records. Contractor must either use PG&E's LME form or seek approval of its own form from PG&E prior to submission of its first application for payment. Any alternative forms must contain the same categories of items as the PG&E LME and provide sufficient detail of the Work performed, including labor employed by Contractor and others performing portions of the Work, all materials incorporated into the Work, use of equipment by Contractor and others performing portions of the Work. PG&E will approve the LM&E sheets daily and retain a copy of the approved LM&E sheets for comparison to Contractor's application for payment. PG&E reserves the right to inspect and sign the delivery or shipping documents for all tools, equipment, and materials charged to or credited out of the Work as they are received or removed.

8.1.5 Unit Cost. If Contractor is being compensated on a unit cost basis per Section 6.3.3, the application for payment must include a list stating the unit price item numbers, unit prices, quantities, dollar amounts and other information as required to identify the Work and provide all material and equipment invoices substantiating the number of units installed.

8.1.6 Premium Time. To the extent that Contractor or any of its subcontractors (inclusive of all tiers) incur premium time for one of the following conditions, Contractor and its subcontractors (inclusive of all tiers) will be reimbursed for the premium cost of labor based upon established labor rates or applicable union wage rates in effect, plus applicable taxes and any additional cost to Contractor for personnel per the agreed billable rates. No additional overhead and burden as defined in Section 6.4.6, or non-reimbursable expenses or Fee as

defined in Section 6.4.7 will be allowed. Contractor and its subcontractors (inclusive of all tiers) must provide documentation substantiating any premium time in the application for payment.

(a) Incidental Work required by PG&E that would require shift differentials or premium time beyond a normal work day or work week. For purposes of this section, incidental work may include clearances, work to expedite certain features, work performed in assisting PG&E in conducting testing and "startup," and certain incidental overtime performed for PG&E's convenience. Emergency work as described in Section 19.3 and holiday work as described in Section 19.2 are not incidental work.

(b) Work placed on an accelerated schedule per Section 7.7 solely for PG&E's convenience and not due to any fault or neglect by Contractor in performing the Work.

8.1.7 Diversity Disbursement Record. With each application for payment, Contractor must submit an updated list of subcontractors (inclusive of all tiers)/suppliers and disbursement record per PG&E's form with a current accounting of actual subcontractor (inclusive of all tiers) payments as of the date of the payment application as described in column 6 of the form.

**8.2 Progress Payments.** If the Work or Service requires more than 6 weeks to complete, progress payment applications will be submitted to PG&E in quadruplicate before the 30th day of the month. PG&E's payment terms are 2% 15 days, net 45 days. After receipt and approval of Contractor's invoice, PG&E reserves the right to discount payments by 2% of the invoice total amount for payment(s) made within 15 days. Any remaining, uncontested balance will be payable to Contractor within 45 days. All timelines are calculated from the date a correct invoice is received by PG&E's accounts payable department in San Francisco.

8.2.1 Retention. Each application for payment will retain 10% for the construction portion of the Work until Final Completion. There is no retention on design portions of the Work or on Services. Retention will be released with final payment per Section 8.4.

8.2.2 Stored Materials and Equipment. Progress payments may include payment for stored materials and equipment provided the materials and equipment are properly stored in accordance with Section 4.9.7 and a complete invoice and bill of sale transferring title to PG&E upon payment is included in Contractor's supporting evidence. Payment will include the costs of applicable insurance, storage, and transportation to the site. Contractor will not make advance payments to subcontractors or suppliers for stored materials or equipment without prior approval of PG&E. All materials and equipment stored off site must be segregated and labeled "Property of PG&E" and include the name and number of the Capital Improvement Project or Projects.

8.2.3 Supporting Documents. Each payment application will be accompanied by an updated Schedule per Section 7.8 and sufficient documentation supporting the cost of the Service or Work included in the application, including, without limitation: (i) receipts, purchase orders, contracts, time reports, and other documentation as reasonably required by PG&E; (ii) executed conditional waiver and release forms complying with California state law covering all Work performed during the billing period by Contractor, and its consultants and subcontractors (inclusive of all tiers), suppliers, and equipment vendors; and (iii) certification that Contractor has no knowledge of any recorded stop payment notices or mechanics liens with respect to the Work performed by others and that all consultants, subcontractors (inclusive of all tiers),



suppliers, and equipment vendors have been paid to date or will be paid with the proceeds for Work covered under the payment application.

8.2.4 No Waiver. Payment by PG&E will not constitute approval or acceptance of any cost of the Service, Work or Fee included in the payment application or final acceptance or approval of that portion of the Service or Work (as applicable).

**8.3 Right to Withhold.** PG&E may refuse to approve a payment application or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or any part of a prior payment application to the extent PG&E determines, in its sole discretion, is necessary to protect PG&E from loss due to one or more of the conditions listed in Sections 8.3.1 through 8.3.12. When and to the extent the reason for withholding payment no longer applies, the withheld amount will be paid without interest.

8.3.1 Defective Work or Services not remedied, materials not furnished, clean-up not performed, or any other non-conforming aspects of the Work.

8.3.2 Actions, levies, attachments, or court orders filed, or which PG&E on the basis of reasonable evidence believes are likely to be filed (including Claims covered by insurance until the Claims are accepted by the insurance carrier in an amount reasonably necessary to protect PG&E's interest).

8.3.3 Failure of Contractor to make timely payments to consultants, subcontractors, suppliers, transportation or shipping companies, equipment vendors or any other claims arising out of performance of portions of the Service or Work (as applicable).

8.3.4 Damage to any portion of the Work, PG&E's property, and/or PG&E caused by Contractor, its employees, engineers, consultants, subcontractors (inclusive of tiers), suppliers, or anyone for whom Contractor may be liable unless such damage is covered by the "all risk" builder's risk insurance and PG&E has actually received sufficient funds from the insurer to cover the damage.

8.3.5 Failure to carry out the Work or Service in accordance with the Contract Documents.

8.3.6 Failure of the Work or Service to have progressed to the point indicated in the application for payment and reasonable doubt that the Work or Service (as applicable) can be completed within the remaining balance of the Contract Price.

8.3.7 Failure to comply with scheduling requirements or provide PG&E with timely updates, or failure of the Work or Service to have progressed to the point indicated in the Schedule and doubt that the Work can be completed within the Contract Time. If PG&E reasonably believes that the Contractor cannot complete the Work within the Contract Time, PG&E may, in its sole discretion, retain amounts to cover liquidated damages.

8.3.8 Any of the representations or certifications of Contractor under any of the Contract Documents or in an application for payment is materially false or misleading;

8.3.9 Contractor's failure to deliver insurance certificates, security as required under Article 12, or other documents required by the Contract Documents.

8.3.10 Contractor filing a petition for bankruptcy or petition of reorganization.

8.3.11 Contractor's violation of Applicable Law.

8.3.12 Contractor's failure to comply with any term or condition in connection with performance of the Service or Work (as applicable) under the Contract Documents.

**8.4 Final Payment.** PG&E will make final payment to the Contractor as soon as practicable but within 60 calendar days after Final Completion, receipt of an approved payment application for final payment, receipt of all close-out deliverables as defined in Section 4.10.6, and determination of the final Contract Price. Final payment application will include all retention amounts and Contractor must provide an affidavit executed under penalty of perjury stating that any and all fees and monies due to consultants, subcontractors (inclusive of all tiers), suppliers, and equipment vendors through the date of Contractor's last payment request have been paid in full and that all subcontractors (inclusive of all tiers) and consultants will be paid within 5 business days after Contractor's receipt of final payment from PG&E. PG&E must approve the payment application for final payment.

8.4.1 Evidence. Contractor must provide the same supporting documentation required under Section 8.2.3 and will include conditional waivers and releases for final payment per California state law with final application for payment, and within 5 calendar days after receipt of final payment, Contractor will provide PG&E with executed unconditional waivers and releases upon final payment per California state law covering all Work performed by Contractor and its consultants and subcontractors (inclusive of all tiers), suppliers, and equipment vendors.

**8.5 Payment Not Acceptance of Work.** Final payment does not waive PG&E's right to later object to defective design, materials, or workmanship; waive any warranty rights PG&E may have; or release Contractor or its consultants or subcontractors (inclusive of all tiers) from defense, indemnity, or insurance obligations under Articles 10 and 11.

**8.6 Waiver of Claims.** Acceptance of final payment by the Contractor constitutes a waiver of Claims by Contractor and its consultants and subcontractors (inclusive of all tiers), suppliers and equipment vendors except for those previously made in writing and identified as unsettled in the final application for payment and submitted for Claim resolution under Article 27.

**8.7 No Right to Stop Work.** If Contractor disputes any determination with respect to any payment application, it will nevertheless expeditiously continue to prosecute the Service or Work (as applicable), provided that undisputed amounts are paid and regardless of whether Contractor has posted security under Article 12. PG&E will not be deemed to be in default or breach of contract for withholding of any payment under Section 8.3. Contractor may submit unresolved payment disputes as a Claim under Article 27.

**8.8 Warranty of Title.** Contractor warrants that title to all Work, materials, and equipment covered by a payment application, whether incorporated into a Capital Improvement Project or not, will pass to PG&E at the time of payment, free and clear of all liens, stop payment notices, Claims, security interests or encumbrances in favor of Contractor, its consultants and subcontractors (inclusive of all tiers), suppliers, equipment vendors, and other persons and entities entitled to make a Claim by reason of having provided design services, labor, materials, or equipment relating to the Work. If Contractor has received payment for the Work at issue, Contractor will defend, indemnify, and hold PG&E harmless per Section 10.1.4 from any and all liens, claims, security interests, or encumbrances recorded by Contractor, or its

consultants or subcontractors (inclusive of all tiers), suppliers, equipment vendors, or other persons or entities entitled to record a lien or make a stop payment notice claim.

**8.9 Payments to Consultants and Subcontractors.** PG&E does not have an obligation to pay, or to see that payment is made to Contractor's consultants, subcontractors (inclusive of all tiers), suppliers or equipment vendors except as may otherwise be required by Applicable Law. Contractor will make payments to its consultants, subcontractors, suppliers, and equipment vendors no later than 5 business days after Contractor's receipt of payment from PG&E. PG&E reserves the right to issue joint checks to Contractor's consultants, subcontractors (inclusive of all tiers), suppliers, and equipment vendors.

**8.10 Audit Right.** PG&E may audit Contractor's records relating to any Work or Service at any time throughout the duration of a Capital Improvement Project (or Projects) and for a period up to 3 years after Final Completion upon 10 business days' written notice. The audit will take place during normal business hours and will be coordinated with Contractor. PG&E representatives may also conduct verifications including, but not limited to, counting employees at the job site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with employees, consultants and subcontractors (inclusive of all tiers), suppliers, and equipment vendors. PG&E will pay for the cost of the auditor. However, should the audit indicate that Contractor's records were fraudulently or negligently prepared or maintained, PG&E reserves the right to seek damages and legal remedies from Contractor including, but not limited to, the cost of the audit and recovery of amounts overbilled. Contractor will include these auditing provisions in all consultant agreements and subcontracts where consultant or subcontractor (inclusive of all tiers) is compensated in any manner other than an agreed lump sum amount.

**8.10.1 Availability of Records.** Upon notice of audit, Contractor will produce all records related to: (i) establishing the initial Contract Price and Schedule, as amended; (ii) cost of the Work or Service; (iii) procurement of consultants and subcontractors (inclusive of all tiers), suppliers, and equipment vendors; (iv) payment applications; (v) Change Orders and any back-charges; (vi) insurance; (vii) job cost reports, LME sheets, daily construction reports; and (viii) any other supporting evidence deemed necessary by the PG&E to substantiate charges related to the Work or Services.

**8.10.2 Other Documents.** The audit may also require inspection and copying of any and all information, materials, and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, criminal background check verification and information as required under Section 25.4.1, or any other information required for verification of compliance with Article 25, notes, daily diaries, superintendent reports, Drawings, receipts, vouchers and memoranda, and all other agreements, sources of information and matters that may, in PG&E's judgment, have any bearing on, or pertain to any matters, rights, duties, or obligations under the Contract Documents.

**8.11 Open Book for all Reimbursable Cost Services and Work.** To the extent any Services or Work is performed under a pricing model that authorizes reimbursement of costs under Section 6.4, PG&E will have unrestricted access to any and all of the following Contractor information: financial statements, computations of overhead rates, core chart of accounts, equipment depreciation ledgers, equipment internal rates, equipment and small tools lists, daily time sheets, supervisor's daily reports, insurance, welfare and benefit records, payroll registers, earnings records, payroll tax forms, material invoices, material cost distribution worksheets,



equipment records, project general ledgers, cash disbursement journals, all documents supporting the amount of any reimbursable cost or adjustment in Contract Price sought by Contractor, work sheets or software used by Contractor to prepare its Claims, work sheets, software, and any other documents used by Contractor to calculate estimates of and actual costs and expenses, and the following supplier, subcontractor, and rental agency information: complete bid and contract files, payment applications and records, payment certificates, cancelled checks, Change Orders, and back charge information.

## **9. CHANGES**

**9.1 General.** Changes in the Services or Work (as applicable) will only be authorized by an executed Change Order, and must be performed under the applicable conditions of the Contract Documents. A Change Order signed by authorized representatives of the Contractor and PG&E documents an agreement to an adjustment in Contract Price, Contract Time, or both. An executed Change Order fully and completely resolves any Claim by Contractor, its consultants, subcontractors (inclusive of all tiers), suppliers and equipment vendors for additional compensation or time arising from or related to the subject of the Change Order. Timely submission of a Change Order Request ("COR") per this Article 9 is a condition precedent to Contractor's and any of its consultants', subcontractors' (inclusive of all tiers), suppliers', or equipment vendors' ability to recover for a changed condition.

**9.2 Conditions for Change.** The conditions for Change Order are dependent on how the Capital Improvement Project (or Projects) is being delivered under the CWA and the specific portion of the Service or Work that Contractor is performing as further described in Sections 9.2.1 and 9.2.3.

9.2.1 If Contractor is performing design and construction for a Capital Improvement Project (or Projects), or being compensated under the Target Cost model per Section 6.3.5, Change Orders are limited to the following circumstances:

- (a) PG&E Generated Scope Changes as defined in Section 1.37.
- (b) Adverse Weather as defined in Section 1.1.
- (c) Force Majeure as defined in Section 1.26.
- (d) Unforeseen and Differing Site Conditions as defined in Section 1.52.
- (e) Suspension of the Services or Work by PG&E under Section 28.1.
- (f) PG&E Caused Delay as defined in Section 1.36.
- (g) Reconciliation for determination of final Contract Price per Sections 6.3.4(f) and 6.3.5(d).
- (h) Requested premium time by PG&E per Section 8.1.6

9.2.2 If Contractor is only performing construction portions of the Work, Change Orders are limited to those categories set forth in Section 9.2.1 as well as changes in scope due to errors and omissions in the Construction Documents.

9.2.3 If Contractor is only performing consulting services other than engineering, procurement and construction per Section 6.2, Change Orders are limited to the following:

- (a) PG&E Generated Scope Changes as defined in Section 1.37.
- (b) Suspension of the Services by PG&E under Section 28.1.
- (c) PG&E Caused Delay as defined in Section 1.36.

**9.3 PG&E Initiated Changes.** Contractor must submit a rough order of magnitude of the change to PG&E within 5 calendar days receipt of the request for change. Contractor must submit a complete Change Order Request ("COR") to PG&E within 10 calendar days' receipt of a PG&E request for change or field directive. The COR must be in a format acceptable to PG&E and include a detailed cost breakdown based on one of the pricing methods set forth in Section 9.6 for adjustments in Contract Price, and a fragnet analysis per Section 7.5 for adjustments in Contract Time.

**9.4 Contractor Initiated Changes.** Contractor must provide PG&E written notice and a rough order of magnitude within 5 calendar days of discovering facts or circumstances giving rise to the applicable condition for change as described in Section 9.2, or if Contractor believes that a PG&E field directive impacts cost or time. Within 10 calendar days of discovery, Contractor will provide a COR, including a detailed cost breakdown based on one of the pricing methods set forth in Section 9.6 for adjustments in Contract Price, and a fragnet analysis per Section 7.5 for adjustments in Contract Time.

**9.5 Submission.** All CORs must be presented to PG&E, and a Change Order must be executed before the expense is incurred. PG&E will review all CORs within 10 calendar days of receipt and may request additional information and back up from Contractor, approve the COR or deny the COR. If the COR is neither accepted or denied within the 10 calendar day period, it will be deemed denied by PG&E. All decisions rendered by PG&E will be final and binding unless a statement of Claim is submitted and PG&E receives timely noticed per the dispute resolution procedures in Article 27.

**9.6 Pricing Methods.** Methods used for determining adjustments to the Contract Price include: (i) mutual acceptance of a lump sum amount properly itemized for labor, materials, and equipment and mark-up for overhead, burden and Fee supported by sufficient substantiating data to permit evaluation of the cost; (ii) mutual acceptance of a not-to-exceed amount for additional engineering and consulting services based on the agreed billable rates multiplied by the time spent plus additional reimbursable expenses directly related to the consulting service per Section 6.4; (iii) Work performed on a time and material basis per the approved billable rates for Contractor's staff and actual field labor rates (as applicable), plus the actual cost for materials and equipment, and the agreed mark-up for overhead, burden, and Fee; or (iv) Work performed on a unit cost basis calculated in the same manner as described in Section 6.3.3. If the Work is performed on a time and material basis, Contractor will keep and present an itemized accounting for the cost of the Work performed based on daily time tickets executed by PG&E, material and equipment invoices, and other supporting data substantiating the amount of the Change Order. All Work will be broken down by labor, materials, and equipment. If additional consulting or engineering services are performed on a not-to-exceed basis, Contractor will present an itemized accounting for the cost of the additional services performed based on the actual time spent multiplied by the applicable approved billable rates

and in accordance with Section 6.4. Regardless of the pricing method used, Contractor and its consultants, and subcontractors (inclusive of all tiers) are subject to the reimbursable and non-reimbursable expenses described in Section 6.4 and must use the agreed billable rates for its general conditions costs, agreed equipment rates, and any unit or other prices established in the MSA or applicable CWA.

**9.7 Adjustment to Contract Time.** Contractor will only be entitled to an extension of time and additional compensation for its general conditions and general requirements if the Contract Time is extended due to a permitted delay under Section 7.5 because of Adverse Weather, Force Majeure or due to Unforeseen and Differing Site Conditions as these types of delays are profit neutral. So, Contractor will not be entitled to additional Fee. If the Contract Time is extended due to PG&E Generated Scope Changes, PG&E Caused Delay, or suspension of the Service or Work by PG&E under Section 7.5, then the Contractor will be entitled to an extension of time and additional compensation for its general conditions, general requirements plus adjustment for Fee. Calculation for additional compensation will be based on the total number of additional work days of extension granted by PG&E after evaluation of the fragnet analysis as required under Section 7.5, and is subject to the reimbursable and non-reimbursable expense provisions set forth in Article 6.4.

**9.8 PG&E Directive.** If PG&E and Contractor cannot agree on the value of the COR, PG&E may issue a written directive instructing Contractor to proceed with the Work or Service on a time and material basis. Contractor must submit all required data under Section 9.6 within 10 calendar days of completion of the Work or Service covered by the directive in a COR or the claim for additional compensation and/or time will be waived. No Claim will be considered after the Work or Service in question has been performed unless PG&E directed that the Work or Service be performed, in writing, or Contractor has received an executed Change Order.

**9.9 Contractor's Adjustment.** The Contractor's adjustment for Change Orders will be limited to the percentage of Fee included in calculating its initial Contract Price unless otherwise specifically indicated in the CWA. Contractor will not be entitled to additional Fee on Change Orders for subcontracted portions of the Work or Service included in the Change Order. Contractor's overhead and burden are included in its agreed billable rates.

**9.9.1 Consultant Adjustment.** Consultants adjustments will be limited to the number of hours expended multiplied times the agreed billable rates set forth in Attachment 3 to the MSA, subject to the pricing methods in Section 9.6 and the reimbursable and non-reimbursable expense provisions set forth in Section 6.4.

**9.9.2 Subcontractor Adjustment.** Subcontractors' adjustment for overhead and profit on Change Orders cannot exceed 20% for mechanical and electrical trades (inclusive of tiers) and 15% for all other specialty contractors. Adjustments for subcontractor changes are subject to the pricing methods in Section 9.6 and the reimbursable and non-reimbursable expense provisions set forth in Section 6.4. PG&E requested premium time is subject to the provisions in Section 8.1.6.

**9.10 Deductive Change Orders.** The amount of credit for deductive Change Orders will be the net decrease in the cost of the Service or Work based on the reimbursable expenses set forth in Sections 6.4.1 through 6.4.6 plus Fee. The amount of credit will be determined based on one of the pricing methods set forth in Section 9.6. When both additions and credits

covering related Work or Services are involved in a proposed change, the Change Order will be determined based on the net increase or decrease.

**9.11 Allowances.** Allowances will be reconciled through written Change Order upon procurement of the portion of the Work identified as an allowance in Contractor's initial Contract Price breakdown. If the cost of the Work exceeds the amount carried in the allowance item, an additive Change Order will be issued based on one of the pricing methods in Section 9.6, subject to the reimbursable and non-reimbursable expense provisions set forth in Section 6.4. If the cost of the Work is less than the amount carried in the Allowance item, a deductive Change Order will be issued in accordance with Section 9.10, decreasing the Contract Price, and 100% of all unused funds will accrue to PG&E.

**9.12 Omitted Work.** If Contractor omits Service or Work (as applicable) that is included in the Contract Documents, PG&E will have the right to withhold payment in an amount which, in PG&E's sole opinion, is equal to the value of Work or Service (as applicable) that was omitted until the Work or Service is performed.

**9.13 Contract Time Impacts and Extended Costs.** Contractor does not reserve a right to assert cumulative impact costs, extended job site costs, extended overhead, constructive acceleration, and/or actual acceleration beyond what is allowable under Section 7.5 and timely claimed in a COR.

**9.14 Continued Performance.** No Work or Service will be allowed to lag pending the adjustment through Change Order, but will be promptly executed as directed, even if a dispute arises. Disputes regarding Change Orders will be resolved in accordance with Article 27. Failure to promptly execute Work or Service as directed by PG&E will constitute a material breach of contract.

## **10. LIABILITY, INDEMNIFICATION, AND DEFENSE**

**10.1 Indemnification.** To the fullest extent permitted by law, Contractor will defend (with counsel acceptable to PG&E), indemnify and hold PG&E and its officers, board members, agents, directors, partners, members, employees, affiliates, parents and subsidiaries ("Indemnitees") harmless from and against any and all Claims, demands, causes of action, damages, costs, expenses (including legal, expert witness, and consulting fees and costs), losses or liabilities, in law or equity, arising out of, or resulting from, actual or alleged acts or omissions in the performance of the Services or Work by the Contractor, its employees, engineers, consultants, subcontractors (inclusive of all tiers), suppliers, or anyone for whom any of them may be liable. The indemnification obligations set forth in this Section will not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for Contractor under the Workers' Compensation Acts, disability benefit acts, or other employee benefit acts. Contractor's indemnification and defense obligations will survive termination of the MSA or any CWA for the following types of Claims:

**10.1.1 Personal Injury and Property Damage.** Personal injury, including bodily injury, sickness or disease, or death and/or damage to tangible property (other than the Work itself and including loss of use) alleged by third parties (including persons, employees, or agents of Indemnitees and Contractor's employees) but only to the extent caused by strict liability or the actual negligent acts or omissions of the Contractor, its engineers, consultants, subcontractors (inclusive of all tiers), or suppliers, or anyone directly or indirectly employed by any of them for whose acts they may be liable.

10.1.2 Violations of the Law. Penalties, fees, and costs imposed on account of the violation of any Applicable Law and caused by the act or omission of the Contractor, its engineers, consultants, subcontractors (inclusive of all tiers), or suppliers, or anyone directly or indirectly employed by any of them for whose acts they may be liable.

10.1.3 Insurance. Failure of Contractor or its engineers, consultants, or subcontractors (inclusive of all tiers) to comply with the insurance provisions under the MSA or any CWA.

10.1.4 Liens and Stop Payment Notices. Mechanics liens or stop payment notice Claims for Services or Work performed on a Capital Improvement Project or Projects, including incidental or consequential damages suffered by an Indemnitee as a result of the Claim, and provided that PG&E has paid Contractor for the portion of the Services or Work at issue.

10.1.5 Infringement of Intellectual Property. Infringement of any intellectual property right including patents, copyrights, or license, which may be brought against Indemnites as a result of the Services or Work.

10.1.6 Hazardous Materials. Claims, liability, or damages arising out of, or resulting from, Contractor's or its engineers', consultants', subcontractors' (inclusive of all tiers), suppliers', or equipment vendors' acts or omissions that cause or permit any Hazardous Materials to be generated, released, disposed, discharged, exacerbated (if pre-existing condition), or brought onto, or stored at, the Project site or used in the Work unless specified, and only if there is not a reasonable substitute for the specified material.

10.1.7 Regulatory Tariff. Fees and costs imposed on PG&E for regulatory tariffs to the extent liability is due to Contractor, its engineers, consultants, subcontractors (inclusive of all tiers), or suppliers, or anyone directly or indirectly employed by any of them for whose acts they may be liable as determined by a court of competent jurisdiction per Section 29.11.

**10.2 Duty to Defend.** Contractor will defend all Claims (with counsel acceptable to PG&E) as defined in Section 10.1 at its own cost and expense and satisfy any judgment or decree that may be rendered against any Indemnitee arising out of a Claim, and reimburse Indemnitee(s) for any and all attorney's, expert witness, and consulting fees and expenses incurred in connection with the Claim or in enforcing the indemnity and defense granted by Sections 10.1 and 10.2.

**10.3 Lien Free Obligation.** If any engineer, consultant, subcontractor (inclusive of all tiers), tier-subcontractor (inclusive of all tiers), or supplier records or files, or maintains any action on or respecting a Claim of mechanics lien, stop payment notice, or notice of *lis pendens* relating to the Services or Work, the Contractor will immediately procure, furnish, and record appropriate statutory release bonds that extinguish or expunge the mechanics lien, stop payment notice, or notice of *lis pendens*, provided that PG&E has paid the Contractor for that portion of the Services or Work. If Contractor does not timely pay its engineers, consultants, subcontractors (inclusive of all tiers), or suppliers as required, then PG&E may settle or bond over those Claims, or take other actions necessary to prevent a default under any other agreement affecting the Capital Improvement Project or Projects, and PG&E will withhold payment to Contractor or demand reimbursement for any substantiated amounts that were necessary to satisfy Contractor's obligation to satisfy, discharge, or defend against the Claim of lien or stop payment notice. Nothing contained in this Section requires the Contractor to provide



release bonds for any valid mechanics lien, stop payment notice, notice of *lis pendens*, or other Claim due to PG&E's non-payment or a valid dispute between PG&E and Contractor.

**10.4 Enforcement.** Nothing contained in this Article 10 will be construed to impose any obligation in conflict with current California state law. In the event of a conflict with Civil Code section 2782, *et seq.*, as may be amended, the MSA or CWA will be modified to allow indemnification and defense by Contractor to the greatest extent permitted by law.

**11. INSURANCE.** Contractor must carry the insurance required under Attachment 5 to the MSA, and in accordance with the CWA.

**12. PERFORMANCE SECURITY**

**12.1 Parent Guaranty.** Within 10 days of execution of the MSA, Contractor will provide to PG&E an irrevocable guaranty in substantially the form of Attachment 7A to the MSA, duly executed by the Contractor Parent Guarantor for the benefit of PG&E. In order to provide PG&E with evidence of Contractor's and Contractor Parent Guarantor's financial ability to complete the Project, Contractor agrees to comply with PG&E's reasonable requests for financial information. If, at any time, PG&E determines that the financial status of Contractor Parent Guarantor has been diminished, PG&E can require a letter of credit in an amount sufficient to address the diminution in Contractor Parent Guarantor's financial status regardless of whether the Capital Improvement Project is already underway or whether a letter of credit was initially required under the CWA per Section 12.2.

**12.2 Letter of Credit.** If required by the CWA, in addition to the parent guaranty, the Contractor will furnish to PG&E, and maintain, an irrevocable, standby letter of credit in the amount, by an Approved Issuer, and for the duration, specified in the CWA. The letter of credit will substantially be in the letter of credit form set forth in Attachment 7B to the MSA. If the issuer of the letter of credit fails to maintain its Approved Issuer status, the Contractor must, within 10 business days of receiving PG&E's written notice, replace the letter of credit with another letter of credit in the amount, by an Approved Issuer, for the duration specified in the CWA, and in a form substantially the same as the letter of credit form set forth in Attachment 7B to the MSA. The cost of the letter of credit will be included in the Contract Price. At Final Completion, the letter of credit, at PG&E's sole discretion, may be reduced to 10% of the Contract Price and will continue until Contractor's warranty obligations under the CWA have expired. For the sake of clarity, PG&E will be entitled exercise any rights or remedies of a secured party and therefore has a right to draw upon any letter of credit provided by Contractor pursuant to this Section 12.2 to satisfy the obligations of Contractor not fully satisfied when due under any CWA entered into under the MSA.

**12.3 Payment and Performance Bond.** If required by the CWA, Contractor will execute and furnish to PG&E a payment and performance bond for one hundred percent (100%) of the cost of the construction work. The bonds will be executed by a surety company admitted in California and acceptable to PG&E, and in a form satisfactory to PG&E. The bonds will not restrict or adversely affect PG&E's rights to offset or deduct from payments to Contractor as provided in the Contract Documents. The cost of the bonds will be included in the Contract Price. All changes, additions, or omissions in the construction portions of the Work ordered through a Change Order under Article 9 and the applicable CWA are part of the construction work and will be performed and furnished in strict accordance with all of the terms and provisions of the executed Change Order and other Contract Documents. Contractor will keep its surety informed of all modifications to this MSA and applicable CWA. The obligations of

Contractor's surety are not to be reduced, waived, or adversely affected by the issuance of Change Orders even if Contractor fails to inform the surety of the Change Order(s), and PG&E will not be required to obtain consent of the surety on behalf of Contractor or its subcontractors (inclusive of all tiers).

### **13. PROJECT MANAGEMENT CONTROL SYSTEMS**

**13.1 Daily Construction Reports.** Contractor will keep a daily log containing a record of weather, each subcontractor (inclusive of all tiers)'s portion of the construction work accomplished on the site, the number of workers per trade, identification of equipment, problems encountered, and other similar relevant data. Contractor will submit daily construction reports on a form approved by PG&E. Daily construction reports will be submitted to the PG&E site representative on a weekly basis for all construction work performed on a Capital Improvement Project or Projects during the prior week, and Contractor will keep 1 copy of all daily construction reports at the site office.

**13.2 Submittal Log.** Contractor will keep a Submittal log containing a record of all Submittals, the date submitted, the date returned to the Contractor and subcontractor (inclusive of all tiers) (as the case may be) and whether the Submittal was approved or requires resubmission. Contractor will keep a jobsite copy of all Submittals and all Submittals, as well as the Submittal log, will be posted electronically on a web portal established for the site.

**13.3 Change Order Log.** Contractor will keep a Change Order log recording all change order requests and executed Change Orders by number and description and documenting the date the change order request was submitted, date reviewed, and whether the change order request is pending, approved or rejected, as well as the date that the Change Order was either approved and executed or rejected. Contractor will keep a jobsite copy of all change order requests and executed Change Orders. The Change Order log will be posted electronically on a web portal established for the site.

**13.4 Request for Information Log.** Contractor will keep a log of all requests for information or clarification ("RFIs"). The log will set forth the RFI number, the date the RFI was submitted and the date it was returned to the field for implementation. Contractor will keep a jobsite copy of all RFIs and all RFIs, as well as the RFI log, will be posted electronically on a web portal established for the site.

**13.5 Weekly Meetings.** Contractor will hold weekly Capital Improvement Project meetings with PG&E representatives, weekly safety meetings, and weekly subcontractor (inclusive of all tiers) coordination meetings to discuss design, preconstruction, jobsite procedures and safety, progress and scheduling, Change Orders, and to resolve any pending design or construction issues. Contractor will be responsible for taking and publishing meeting minutes, documenting progress, resolutions, action items, and outstanding items. Meeting minutes will be posted electronically on a web portal established for the site.

**13.6 Monthly Progress Reports.** Contractor will record the progress of the Work by submitting written monthly progress reports to PG&E, which at a minimum will indicate: (i) overview; (ii) status of procurement; (iii) status of Submittals, Change Orders; (iv) percentages of Work completed, (v) status of delivery of major Capital Improvement Project equipment and components and an explanation any impacts, if delayed, (vi) updated Schedule per Section 13.6.2, (vii) a list of critical activities to be performed during the next month, (viii) an explanation of any delays to critical path or milestones set forth in the most current, approved Schedule, (ix)



recovery plans per Section 7.6, (x) concerns or issues raised by Project Team Members or any Governmental Authority; and (xi) updated monthly budget review pursuant to Section 13.6.1.

**13.6.1 Monthly Budget Review.** Contractor will monitor the Contract Price and will develop a recovery plan with PG&E if it appears that the cost of the Work or Service will exceed the Budget. Contractor will show actual costs for activities in progress, Change Orders, allowance items, and estimates for uncompleted tasks by way of comparison between the monthly updated projection of the Contract Price and the approved Contract Price Breakdown, which will be included as an Exhibit to the CWA.

**13.6.2 Schedule Update.** Contractor will update the Schedule in accordance with Article 7 based on extensions of time that may have been granted through approved Change Order. The Schedule will be used for projection of milestones. However, all Work will be performed in accordance with the work plans as described in Section 7.4.2.

**13.7 Testing and Inspection Logs.** Contractor will maintain an on-site inspection log that is accessible by PG&E and any Governmental Authority. The log will document all tests and inspections performed at the site during construction of the Capital Improvement Project. The record of tests will include the following information:

13.7.1 Request for Inspection.

13.7.2 Date test or inspection was conducted.

13.7.3 Identity of testing agency or special inspector.

13.7.4 Description of the Construction Work tested or inspected.

13.7.5 Identification of any drawings or applicable details on the Construction Documents or Submittals that were used during testing and inspection.

13.7.6 Date that the test or inspection was concluded and the date that the results were transmitted to PG&E.

#### **14. QUALITY ASSURANCE/QUALITY CONTROL PROGRAM**

**14.1 General.** Contractor will prepare and submit to PG&E for approval a plan that describes the procedures and methods Contractor will utilize to control the quality of the Work. The quality control plan must be approved before commencement of the Work and will reflect the requirements of the approved testing, inspection and observation program. PG&E reserves the right to require revisions of the quality control plan that are necessary to ensure the specified quality of the Work. Contractor will assign appropriate site personnel to oversee quality control. Once approved, no change in the quality control plan will be implemented without prior PG&E approval. At a minimum the quality control plan will provide information regarding the following:

14.1.1 Identification of personnel for required training and qualification activities.

14.1.2 Procedures for testing and inspections that identify individual inspection or testing points and acceptance criteria, and include provisions for recording results and the responsible inspection/test personnel.

14.1.3 Procedures for identifying what applicable technical and quality requirements will be required of vendors supplying materials, parts and services to ensure compliance with the Contract Documents.

14.1.4 Procedures for receiving, inspecting and accepting materials and equipment. The procedures will include, at a minimum, examination of the physical condition for compliance with the Contract Documents, purchase order and/or subcontract agreement, and identifying and processing any non-conforming goods.

14.1.5 Provisions for identifying and timely remedying non-conforming or defective construction work.

14.1.6 Documentation control to maintain records of the activities included in the quality control plan. All documentation will be submitted to PG&E as part of the close-out documentation and therefore must be logically organized and indexed for reference.

**14.2 Manufacturer's Field Services.** To the extent required, Contractor will engage in a factory-authorized service representative to inspect field-assembled components and equipment installation, including service connections. All manufacturers' field service reports must be in writing and included as part of the records turned over PG&E during close-out.

**14.3 Quality Control Reports.** Contractor will keep daily quality control reports throughout the duration of the construction process certifying that the relevant area of the construction work has been inspected. The quality control reports will be prepared, signed and dated by the personnel identified as the supervisor in the quality control plan and will include, at a minimum, the following information:

14.3.1 Identification of the material, equipment or component that was inspected and indicate, if applicable, if the Submittals have been reviewed and approved by the appropriate engineers and design professional.

14.3.2 Indicate that materials and/or equipment comply with the requirements of the Specifications and other Contract Documents and are properly stored, if not yet installed.

14.3.3 Indicate that the construction work has been coordinated, that all required preliminary work has been inspected by the quality control personnel and appropriate Governmental Authorities, was properly performed, and that the area is ready to receive subsequent construction work. If the construction work is not acceptable, provide a written description of any re-work required in the area inspected with a root cause assessment of the re-work (including which subcontractors (inclusive of all tiers) are involved), any cost involved in the required re-work, and the expected completion date of the required re-work.

14.3.4 Results of any off-site testing or quality control work and any required further actions.

14.3.5 Other necessary information including, directions received, quality control problem areas, deviations from the quality control plan, construction deficiencies encountered, quality control meetings held, acknowledgement that as-built drawings and BIM (if applicable) have been updated to reflect conditions, corrective direction given by quality control personnel, and corrective action taken by Contractor.

## **15. LEAN PROGRAM**

**15.1 General.** To the extent required under the CWA, Contractor will prepare a Lean Program for approval by PG&E that, at a minimum, includes each of the Lean™ principles and techniques as developed or defined by the Lean Construction Institute™ as generally described in Sections 15.2 through 15.14 below. Throughout the design and construction process, Contractor and its engineers, consultants, and subcontractors (inclusive of all tiers) must comply with the PG&E approved Lean Program.

**15.2 Lean Construction Workshop.** To the extent required under the CWA and prior to commencement of the Work, Contractor will lead the Project Team Members in a multi-day, facilitated Lean Construction Workshop to increase understanding of Lean Project Delivery Methods, to develop protocols and procedures for using Lean techniques, and to develop appropriate materials that further demonstrates how the Lean Program will be used throughout the design and construction process.

**15.3 Open Communication.** Communication is open, clear and direct. It is important that all Project Team Members be apprised of information that affects their performance or which they can impact. Whenever possible, communication should be directly between the immediate Project Team Members through the most expeditious manner, with information or decisions documented and made available. The goal of communication in Lean is to assure that all Project Team Members have a high level of common understanding.

**15.4 Collaboration.** Project Team Members will freely share concepts and ideas with other Project Team Members to improve the overall Project outcome. Within the limits of licensing or professional registration, the parties will review the work or services of other Project Team Members and recommend improvements and will openly consider suggestions from other Project Team members regarding the individual party's portion of the work or services. Nothing in this paragraph changes a party's responsibility for its portion of the Work or requires a party to assume responsibility for the work or services of others or to engage in work or services that requires licensure beyond that required to perform its respective scope of work or services.

**15.5 Reliable Promising.** Effective project planning requires that each Project Team Member clearly communicates its needs and must provide reliable promises to other Project Team Members with regard to its own performance. If an engineer, consultant, or subcontractor (inclusive of all tiers) discovers that it will not achieve a promise, it must immediately inform Contractor identifying when it can perform, and any impediments to its performance. Contractor is responsible for notifying PG&E.

**15.6 Commitment-Based (Pull) Scheduling.** Schedule milestones will be collaboratively developed between Contractor and PG&E with input from other Project Team Members and realistic durations agreed by those who are primarily responsible for delivering the information, services or materials for various components of the Work. In making detailed work plans for accomplishing the various milestones, Contractor will use a planning system based on requests and commitments by other Project Team Members to each other for information, materials or resources that the requester needs to accomplish its task by a certain time. This optimizes the flow of work through the Project by increasing schedule reliability and reducing bottlenecks and activity that does not facilitate achievement of the milestones.

**15.7 Target Value Design.** Target Value Design is a design discipline that requires project values, cost, schedule, and constructability to be basic components of the design

criteria, and uses cost targets to drive innovation in designing a project to provide optimum value to an owner. Target Value Design uses Set Based Design, taking into consideration Project values, cost, schedule, sustainability, life-cycle, maintenance, and constructability requirements from a multi-disciplinary design and construction professionals before design decisions are made to allow the design to progress within the Budget and Contract Time. The Parties will use Choosing By Advantages as appropriate to reach decisions during the design process.

15.7.1 Set Based Design involves delaying design decisions until later in the process to allow Project Team Members the ability to explore several design alternatives taking into consideration trade-offs for integrated systems with competing requirements before design decisions are made. Set Based Design supports concurrent engineering, which eliminates waste, avoids locking in costs before necessary learning can occur, facilitates partitioning of complex designs to cross-functional teams, and supports flexibility in design.

15.7.2 Choosing By Advantages is a method of decision making based on the importance of advantages.

**15.8 Elimination of Waste.** Design or construction effort that does not add value is waste and should be reduced or eliminated. Design effort that is not necessary for construction or for regulatory purposes, should be avoided. Similarly, construction resources and materials that are not incorporated into the completed Capital Improvement Project should be reduced or eliminated. Contractor and its subcontractors (inclusive of all tiers) and suppliers will maximize the use of just-in-time delivery of materials and information to reduce waste associated with maintaining inventories.

**15.9 5S and Visual Management.** 5S is a Lean system that reduces waste and optimized productivity through maintaining an orderly workplace. Contractor will integrate 5S duties into regular worksite duties.

(a) "Sort" focuses on eliminating waste by eliminating unnecessary items from the workplace that are not needed for current production.

(b) "Set in Order" focuses on creating efficient and effective storage of materials and items so that they are easy to find, use, and put away.

(c) "Shine" encourages the work area to be kept swept and clean. Daily follow-up is necessary to sustain this improvement.

(d) "Standardize" best practices in the work area

(e) "Sustain" focuses on making new habits and standards for work organization by maintaining correct processes and procedures.

**15.10 Quality and Reduction in Rework.** Quality is created through careful work, not by inspection and rejection. Contractor, engineers, consultants and subcontractors (inclusive of all tiers) will consider innovative ways to design work that reduces the risk of installation errors. Each Project Team Member must strive to accurately complete its portion of the Work or Service and should identify any work or services that does not meet the Agreed Program or Contract Documents, so that necessary corrections can be identified and executed before, or at the time, the work or service is being performed. Contractor will strive to eliminate rework.

Contractor will collaborate with its subcontractors (inclusive of all tiers) to develop clear and effective procedures for a trade to hand-off of work to follow-on trades so that any quality deviations are caught early.

**15.11 Best Person.** Work or Services are performed, to the greatest extent possible, by the organization or individual best capable of performing that portion of the work or service.

**15.12 Value of Ideas, not Status of Author.** Open communication and collaboration leads to the development of new ideas and concepts. Good ideas can come from any Project Team Member and it is the value of the ideas, not the role or status of the author, that determines whether an idea or concept will be used.

**15.13 Optimize the Whole Project, not its Components.** Contractor will focus efforts on creating value for the Capital Improvement Project as a whole within the Agreed Program and Contract Documents. Efforts to optimize any individual Project Team Members portion of the work or service required must benefit the entire Capital Improvement Project to be justifiable

**15.14 Continuous Improvement.** Lessons learned are generated continuously and used to guide and improve processes while the Work or Service is underway rather than only at its conclusion.

## **16. BIM PROTOCOL**

**16.1 General.** To the extent required under the CWA, Contractor will prepare a BIM Protocol for approval by PG&E that will include the following.

**16.2 Building Information Modeling Workshop.** Contractor will meet with PG&E to develop detailed protocols for the use of Building Information Modeling on the Capital Improvement Project or Project, which will be documented in a BIM execution plan. The protocols will consider, among other things, the items set forth in Sections 16.2.1 through 16.2.13, and will document how Project information will be developed and maintained through the use of BIM.

16.2.1 Specify where and how the Model will be maintained including the parties with substantive responsibility for controlling the information within specific models or model elements;

16.2.2 Provide minimum hardware and software requirements, including the software (including software revision or build date if applicable) that will be used to develop the Model or Models;

16.2.3 Specify protocols for naming conventions, data structure, version control, roll-back, gate keeping, and archiving;

16.2.4 Establish a common coordinate system and conventions as to units;

16.2.5 Specify the level of detail that will be modeled and incorporate appropriate allowances for differing construction tolerances. Engineers are required to design to accurate dimensions in the Model;

16.2.6 Specify when and how information regarding constructability and cost will be derived from the Models and provided to the engineers to inform design;

16.2.7 Specify when and how existing site information is incorporated into the Model.

16.2.8 Specify how RFIs, clarifications, Submittal information will be reviewed and incorporated into the Model.

16.2.9 Specify when and how clash detection/conflict resolution sessions will occur.

16.2.10 Determine what information is more efficiently developed and conveyed using traditional 2D design tools and develop protocols for assuring consistency between the BIM and ancillary 2D information.

16.2.11 Specify how the BIM will be updated and function as a record model that will be delivered to PG&E as part of the close-out documentation.

16.2.12 Specify what design information, if any, will be developed or maintained outside of the BIM.

16.2.13 Specify Model elements relevant to facility operation and maintenance that can be exported to PG&E's computerized maintenance management system.

**16.3 Model Administrator.** Project Team Members are responsible for maintaining any individual design or analysis models and providing their modeling information, at appropriate intervals, to the administrator of the Model ("Model Administrator"). During the design phase, Contractor will select a Model Administrator who is responsible for receiving modeling information from other Project Team Members and incorporating the information into a master BIM. Unless otherwise agreed, the Model Administrator will host and manage the modeling information. The Model Administrator will document the decisions reached in the draft BIM execution plan.

**16.4 Status of the Building Information Model.** Contractor will perform construction work in accordance with the BIM and other Contract Documents deemed necessary, subject to any subsequent modifications. Elements necessary for a fully functional facility, but not modeled due to their size or level of detail, will be provided as part of the construction work without any change to Contract Price and with a level of quality consistent with the Agreed Program and other Contract Documents. It is anticipated that some design information, such as construction details, will not be incorporated into the BIM, but will be provided as conventional 2D drawings or CAD files. Subject to the agreed level of modeling, the Model provides controlling dimensional information except where 2D drawings are specifically intended to be prepared at a greater level of accuracy than in the Model. Some design information will only be contained in the Specifications. The BIM, the 2D drawings, and the Specifications are all Contract Documents.

**16.5 Submission of Signed and Stamped Drawings.** 2D drawings, calculations and Specifications must be generated, reviewed, sealed and submitted for review and approval by PG&E and Governmental Authorities. To the greatest extent possible, the 2D drawings will be generated from the Model.



## **17. WARRANTY AND NON-CONFORMING WORK**

**17.1 Standard Warranty.** Contractor warrants that the Work will be new, of good quality, free from defects, conforming to the Construction Documents, applicable code requirements, and Applicable Law, and, is suitable for the use intended, and vests in PG&E title to all construction work, free from any security interest, line, or encumbrance. For a period of 5 years commencing from PG&E's acceptance of a portion of the Capital Improvement Project or Substantial Completion of the Capital Improvement Project (or Projects), and for longer periods specified in the Construction Documents for certain equipment manufacturers or suppliers ("warranty period"), the Contractor will repair or replace at its own expense, including any expense associated with accessing the construction work, any and all deficient or defective construction work together with any other work that is damaged during repair or replacement. Contractor warrants and guarantees that any corrective work will also meet the warranty requirements stated in this Article 17. If PG&E's operation or use is impaired by nonconforming construction work or its correction, the Contractor and its subcontractors (inclusive of all tiers) will use off-hours labor and timesaving procedures as PG&E may request, at no expense to PG&E. The warranty excludes improper or insufficient maintenance, improper operation, normal wear and tear, and normal usage. Establishment of the 5 year express warranty period for correction of Work relates only to the Contractor's specific obligation to correct defective or non-conforming construction work, and has no relationship to statute of limitations periods for legal claims arising from the Contract Documents.

**17.2 Breach of Warranty.** If within the warranty period, repairs or changes are required in connection with the construction work as the result of the use of materials, equipment, or workmanship that are inferior, defective, or not in strict accordance with the terms of the Contract Documents, Contractor will, and without expense to PG&E, repair and correct the construction work to the condition required under the Contract Documents and to PG&E's reasonable satisfaction in accordance with Section 17.3.

### **17.3 Warranty Repair Process.**

**17.3.1 Discovery.** PG&E will provide Contractor with written notification of the discovery of any required warranty repair within the applicable warranty period. Upon receipt of notification of request for a repair, Contractor will start the warranty repair as soon as possible, but in all events, the warranty repair will, with the exception of repairs covered under Sections 17.3.2 and 17.3.3, be completed no later than 10 calendar days after receipt of the notification by Contractor. In the event that the warranty repair by its very nature and with the expenditure of all due diligence and best efforts on the part of Contractor, cannot be completed within 10 calendar days, PG&E will provide in writing to Contractor a reasonable amount of additional time to complete the warranty repair work.

**17.3.2 HVAC, Plumbing, Electrical.** Contractor must commence all heating, ventilation, air conditioning, plumbing, and electrical warranty repairs within 24 hours of notification by PG&E, and Contractor must use its best efforts to complete the warranty repair work within 48 hours of notification by PG&E. If the warranty repair by its very nature and with expenditure of Contractor's best efforts cannot be completed within 48 hours, Contractor may request from PG&E a reasonable amount of additional time to complete the warranty repair work, which additional period will not exceed 10 calendar days from the date of notification by PG&E.



**17.3.3 Emergency.** If an emergency should result as a direct or indirect consequence of any item that is subject to the warranty repair obligations of Contractor, PG&E will have the right to immediately repair the item, without waiving the guarantee or the warranty repair obligations under this Article 17. For the purpose of this section, an "emergency" is defined as any warranty repair that causes any portion of a Capital Improvement Project to be (i) unsafe or in violation of PG&E's Contractor Safety Project Standard Contract Requirements, or of any of PG&E's other safety plans, requirements, precautions, or policies; (ii) uninhabitable, or (iii) unfit for its intended use.

**17.3.4 PG&E Correction.** In the event Contractor fails to fully and completely comply with the requirements in this Section 17.3, PG&E may commence and complete the warranty repair, in any reasonable manner that PG&E may deem fit. PG&E has the right to immediately deduct or charge Contractor for all costs reasonably incurred by PG&E under this Section 17.3.4, plus a reasonable fee for administrative and supervisory activities. Deductions may be taken from amounts due and payable by Contractor for such warranty repair. If Contractor is no longer due and owing, PG&E will invoice Contractor for all costs incurred by PG&E in performing the warranty repair, which will be due and owing to PG&E within 30 business days' receipt. If Contractor fails or refuses to pay PG&E within 30 days of demand, interest will be assessed and begin to accrue at the rate of 5% from the date payment was demanded until payment is received by PG&E.

**17.4 Subcontractor and Supplier Warranties.** Contractor will procure from its subcontractors (inclusive of all tiers) and suppliers, all required guarantees and warranties per the Specifications with respect to equipment and materials incorporated in the Capital Improvement Project (or Projects) as well as an express warranty on workmanship, and will transmit the warranties to PG&E before Final Completion and close-out as required under Section 4.10.6. At a minimum, and without expense to PG&E, those warranties will be for the warranty period specified in Section 17.1 and must grant PG&E the benefit under such warranties.

## **18. PROTECTION OF WORK AND PROPERTY**

**18.1 Protection of Structures and Equipment.** Contractor will protect buildings and equipment from damage during performance of the construction work. Damage caused by Contractor will be repaired to PG&E's satisfaction at Contractor's expense as provided in Section 18.8. Contractor will also protect any and all of PG&E's structures and buildings from any damages resulting from excessive or repetitive loading, and to prevent such damage, Contractor will request from PG&E information regarding the capacity of the pertinent buildings and structures prior to commencing any construction work that might impact such structure or building.

**18.2 Adjacent Properties.** If required, the Contractor will provide at least 2 business days' notice to all adjacent property owners before commencement of construction work.

**18.3 Barriers and Warnings.** Contractor will provide barriers and signs to prevent unauthorized entry to construction areas, to allow for PG&E's safe use of the premises, and to protect existing facilities and adjacent properties from damage from construction operations.

**18.4 Water Precautions.** If applicable to the construction work, Contractor will grade the site as required by the civil design included in the Construction Documents. During construction, the Contractor will maintain all trenches and excavated areas free from water

accumulation and will provide the necessary barriers to protect the site from ponding, running water, and soil erosion. The Contractor will provide for increased drainage of storm water and any water that may be applied or discharged on the site during performance of the construction work. All drainage facilities will be adequate to prevent damage to the construction work, site, and adjacent property. Contractor will construct dikes, if necessary, to divert any increased runoff from entering adjacent property (except in natural channels), to protect PG&E's facilities and the construction work, and to direct water to drainage channels or conduits. Contractor will provide ponding as necessary to prevent downstream flooding.

**18.5 Pollution Control.** If applicable to the construction work, the Contractor will prepare a pollution control plan that meets the requirements of the California Stormwater Quality Association's Construction Best Management Practice Handbook / Portal (as may be amended – see <http://www.cabmphandbooks.com/>) to prevent the pollution of drains and watercourses by sanitary wastes, sediment, debris, and other substances and/or soil erosion during construction operations.

18.5.1 No sanitary wastes will be permitted to enter any drain or watercourse other than sanitary sewers. No sediment, debris, or other substance will be permitted to enter sanitary sewers without authorization of the receiving sanitary sewer service, and all possible best management practices will be implemented to prevent materials from entering into any drain or watercourse.

18.5.2 If dewatering of excavations is required, Contractor will obtain the necessary permits from local Governmental Authorities for discharge of the dewatering effluent. The Contractor will be responsible for assuring that water quality of the discharge meets the appropriate permit requirements prior to any discharge.

**18.6 Erosion Control.** If applicable to the construction work, the Contractor will collaborate with the civil engineer to develop an erosion control plan that is consistent with Storm Water Pollution Prevention Plan ("SWPPP") requirements to prevent soil erosion at the site and adjacent property resulting from construction operations. Effective measures will be initiated before commencement of clearing, grading, excavation, or other operations that will disturb the natural protection.

18.6.1 Erosion and sedimentation control practices will include installation of silt fences, straw wattle, soil stabilization, re-vegetation, and runoff control to limit increases in sediment in storm water runoff, including, but not limited to, detention basins, straw bales, silt fences, check dams, geo-fabrics, drainage swales, and sand bag dikes.

18.6.2 The construction work will be scheduled to expose areas subject to erosion for the shortest possible time, and natural vegetation will be preserved to the greatest extent practicable. Temporary storage and construction buildings will be located, and construction traffic routed, to minimize erosion. Temporary fast-growing vegetation or other suitable ground cover will be provided as necessary to control runoff.

**18.7 Traffic Control.** Contractor will prepare a traffic control plan in accordance with the California Department of Transportation Traffic Manual, permit conditions, and PG&E requirements as part of its site logistics plan.

18.7.1 Traffic control will include signs, warning lights, reflectors, barriers, and other necessary safety devices and measures, including sufficient flagmen to direct vehicular

traffic through the construction areas. No material or equipment will be stored or parked where it will interfere with the free and safe passage of public traffic.

18.7.2 All traffic associated with construction operations, including, without limitation, delivery and mail trucks, will enter through the construction site access gate. Contractor will provide signs directing construction and delivery traffic to this gate and will take all necessary steps to minimize inconvenience to PG&E and the general public throughout the construction process. No driveways or private roads will be blocked without notifying the property owner, and access must be restored during all non-working hours.

18.7.3 Safe access must be maintained for pedestrian traffic throughout any public work area at all times.

18.7.4 At least one lane of traffic in each direction on roads used in connection with the Capital Improvement Project must be kept open at all times unless prior approval is provided by PG&E and any affected Governmental Authorities. No roads will be blocked or made inaccessible without prior consent of PG&E and the affected Governmental Authorities. Under no circumstances will Contractor block or obstruct fire lanes.

**18.8 Repair of Damaged Property.** Contractor will remedy or repair at its sole expense all damage, injury, loss to property, structures, construction work, materials or equipment to PG&E or any public property, including but not limited to infrastructure, utilities, streets, roads, curbs, sidewalks, ditches, embankments, culverts, or to any private property, which may have been caused by performance of the construction work by or on behalf of Contractor, subcontractors (inclusive of all tiers), suppliers, or anyone directly employed by any of them or by anyone for whose acts or omissions they may be liable, including but not limited to damage which may have been caused by the transporting of equipment, materials or workers to or from the job site. Contractor will make all necessary arrangements with any public agency having jurisdiction over damaged property or any private party whose property was damaged concerning its repair, replacement and inspection. The Contractor's obligations under this section are in addition to Contractor's indemnity obligations under Article 10.

## **19. WORK HOURS**

**19.1 Standard Hours for Work or Services.** All Work or Services will be performed during regular working hours between 7 a.m. and 5 p.m., Monday through Friday, inclusive, excluding holidays as designated in Section 19.2 below and as requested by PG&E unless a local ordinance or permit condition requires differently. If Work is required outside of standard hours and is not emergency work, Contractor will be reimbursed for premium time per Section 8.1.6.

**19.2 Holidays.** The following holidays are non-work days unless PG&E specifically requires the Contractor to perform Work: New Year's Day, Martin Luther King Jr.'s Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving, and the Friday after Thanksgiving, and Christmas Day. Should PG&E require Contractor to perform Work during a holiday, and not due to Contractor's own fault or neglect, Contractor will be reimbursed as the agreed rates for premium work set forth in the MSA.

**19.3 Emergency Work.** Contractor must be available to provide emergency work 24 hours per day, 7 days a week for work that could not, in PG&E's determination, reasonably be delayed until standard working hours. Contractor must respond to a request for emergency

service calls within 4 hours if the request is placed before 3:00 p.m. If call is placed after 3:00 p.m., Contractor must respond by the next morning. Emergency work will be reimbursed at the agreed rates and fees for emergency work set forth in the MSA.

## **20. ENVIRONMENTAL**

**20.1 California Health and Safety Code.** The California Health and Safety Code requires businesses to provide warnings prior to exposing individuals to materials listed by the Governor as chemicals "known to the State of California to cause cancer, birth defects or reproductive harm." PG&E uses chemicals on the Governor's list at many of its facilities. In addition, many of these chemicals are present at non-PG&E-owned facilities and locations. Accordingly, in performing the Work or Services contemplated under the MSA or CWA, Contractor, its employees, agents, subcontractors (inclusive of all tiers), and suppliers, and their respective employees and agents may be exposed to chemicals on the Governor's list. Contractor is responsible for notifying its employees, agents, and subcontractors (inclusive of all tiers) and suppliers that Work or Services performed under the MSA and CWA may result in exposures to chemicals on the Governor's list.

**20.2 Storage and Disposal of Hazardous Materials.** Hazardous Materials are the property and responsibility of Contractor, and may not be stored or disposed of on or at the job site. Contractor represents and warrants that any facility to which hazardous wastes may be moved is in compliance with any Applicable Law and that the facility is suitable to receive and/or dispose of, and may lawfully receive and/or dispose of the Hazardous Material.

**20.3 Discovery of Hazardous Materials and Notice to PG&E.** In the event that Contractor discovers Hazardous Materials on the site during the performance of the Work, Contractor will immediately (1) stop work in the affected area, (2) secure the area around the Hazardous Materials, and (3) notify PG&E in writing of the condition. Work in the affected area will not be resumed until after written authorization from PG&E.

**20.4 Liability and Responsibility.** With regard to Hazardous Materials, Contractor will comply with all Applicable Laws. Contractor is liable for the release of any Hazardous Materials and for any pollution related to the Work, to the extent that such release is caused by the actions, omissions, negligence or misconduct of Contractor or any subcontractor (inclusive of all tiers), supplier, or equipment vendor, or any of their respective agents, contractors, employees, or representatives. In the event any such release or pollution occurs, Contractor will abate and remove the same as required by Applicable Law, including decontamination, removal, and disposal of any contaminated soil, replacement of contaminated soil so removed, and repair of any damages, all at Contractor's sole cost and expense. Contractor will be fully responsible for any exacerbation of any pre-existing Hazardous Materials discovered at or near the site, including without limitation any release or discharge of any previously contained Hazardous Materials.

## **21. TEMPORARY FACILITIES, TRENCHING AND SHORING**

**21.1 General.** Contractor will review with PG&E where it proposes to locate its temporary construction facilities. Location of temporary structures, buildings, and vehicle parking areas will be subject to prior written approval by PG&E. Temporary structures constructed by the Contractor will remain its property and will be removed by Contractor from the site at its own expense, immediately upon completion of the Work, and the site left in a clean and tidy condition.

**21.2 Temporary Offices.** Contractor will provide and maintain for the duration of the Work all temporary structures, offices, equipment, trailers and/or warehouses necessary for performance of the Services and Work. Before proceeding with the erection or establishment of such facilities, Contractor will provide the dimensions, description, and proposed location of all such temporary facilities to PG&E for approval. Such facilities will be clearly marked with Contractor's business title or logo, be adequate for the intended purpose, and conform to the requirements of all State and local regulations. Contractor's facilities will comply with all applicable mitigation measures identified in the MSA or CWA.

**21.3 Temporary Electricity.** Contractor will provide and maintain temporary electrical power at the site for construction purposes and trailers as required. Permanent power may be available through PG&E, but the Contractor must provide all necessary wiring and appurtenances for connection to the system and meter all connections to PG&E's system to determine usage rates. For smaller loads, such as test equipment, work area lighting, and small hand tools, Contractor may use electrical circuits following PG&E's approval.

**21.4 Temporary Communications.** Contractor will provide and maintain applicable communications and data service connections for field offices.

**21.5 Temporary Water.** Contractor will provide and maintain all required potable water for construction field personnel, as well as water required for, and in connection with, the construction operations such as dust control.

**21.6 Temporary Sanitary Facilities.** Should sanitary facilities exist at the site, Contractor is permitted to use such facilities. If sanitary facilities do not exist, Contractor will provide any necessary sanitary conveniences and remove them upon completion of the Work. Contractor will ensure that all facilities are kept in a clean and sanitary condition at all times, and that all facilities will comply with all Applicable Laws.

**21.7 Temporary Walls, Bulkheads or Fences.** If required by PG&E, the Contractor will erect temporary walls, fences or bulkheads separating the Contractor's Work area from the remainder of the site to prevent entry to the site as well as keeping unauthorized personnel out of the Contractor's Work area. Prior to the erection, Contractor will obtain approval of the location from PG&E. Temporary walls, bulkheads or fencing will be subject to restrictions in any use permit. For each Capital Improvement Project, the Contractor will maintain all required fences through Final Completion. Gates are to remain closed and locked during off-hours.

**21.8 Trenching and Shoring.** Unless otherwise specified, Contractor will provide all required temporary trenching and shoring in accordance with the following requirements.

**21.8.1 Permit Requirements for Trenches 5'-0" or More in Depth.** Contractor agrees to comply in full with section 6500 of the Labor Code and to provide the required permits prior to the initiation of any work, method, operation or process that involves: (i) construction of trenches or excavations that are 5'-0" or deeper and into which a person is required to descend; (ii) the construction of any building, structure, falsework, or scaffolding more than 3 stories high or the equivalent height; (iii) the demolition of any building, structure, falsework, or scaffold more than 3 stories high or the equivalent height; or (iv) the underground use of diesel engines in work in mines and tunnels.

**21.8.2 Detailed Plans for Trenches 5'-0" or More in Depth.** In compliance with Labor Code section 6705, Contractor will submit to PG&E, in advance of excavation, a detailed



plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches 5'-0" or more in depth. If the plan varies from shoring system standards, the plan will be prepared by a registered civil or structural engineer. The plan will not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations.

21.8.3 Sheeting, Shoring, etc. To the extent the Work involves construction of a pipeline, sewer, sewage disposal system, boring and jacking pits, or similar trenches or open excavations, which are 5'-0" or deeper, Contractor will comply with all Applicable Laws, regulations, codes and PG&E standard and safety requirements, and the Contractor must include adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life or limb pursuant to Labor Code section 6707, which will conform to applicable safety orders. Nothing in this section will be construed to impose tort liability on PG&E or any of its employees.

21.8.4 Excavations Deeper than 4'-0". If Work under the CWA involves digging trenches or other excavation that extends deeper than 4'-0" below the surface, Contractor will promptly, and before the following conditions are disturbed, notify PG&E, in writing of any:

(a) Material that the Contractor believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(b) Unforeseen and Differing Site Conditions as defined in Section 1.52.

## **22. SCAFFOLDING AND HOISTING**

**22.1 General** Contractor will provide all bracing, hoisting, cranes, rigging, forklifts, ladders, scaffolding and other equipment necessary for the performance of the Work. This will include flagmen and all necessary safety precautions.

22.1.1 Contractor must prepare, for review only, engineered hoisting plans showing hoist locations, pad specifications matching existing slab-on-grade, out-rigger loads, pick points, boom swing, setting points and crane limits. Any changes from the hoisting plan are to be brought to PG&E's attention in writing before performing the construction work.

22.1.2 Contractor will coordinate the hoisted loads so as not to overload the structure. Pre-sort deck and split truck deliveries as needed to accommodate erector's hoisting schedule.

## **23. LABOR AND RELATIONS**

### **23.1 Contractor Performing IBEW Represented Work.**

23.1.1 The provisions of this Section 23.1 will apply if Contractor is assigned Work that is normally performed by PG&E employees represented by the International Brotherhood of Electrical Workers ("IBEW"), Local 1245.

23.1.2 If PG&E identifies any Work in the MSA or CWA as construction work normally and historically performed by IBEW-represented PG&E employees in one of the



following departments, then such construction work must only be performed by a contractor who is signatory to an agreement with IBEW Local 1245 that covers the identified Work: Electric Transmission and Distribution (T&D), Gas T&D, or Substation Departments (collectively, the "Identified Departments"). Contractor will not subcontract such construction work to a non-signatory contractor or to a contractor who is signatory to a union other than IBEW Local 1245, unless such contractor has requested and received the prior written approval of PG&E, which approval may be contingent upon, among other things, receipt of any necessary third party approvals.

23.1.3 The provisions of this Section 23.1 do not apply to (i) maintenance work normally and historically performed by IBEW-represented PG&E employees in the Identified Departments or (ii) construction and maintenance work normally performed by IBEW-represented PG&E employees in all other PG&E departments (collectively, "Other Work"). For Work PG&E identifies as Other Work not subject to the requirements of this Section 23.1, Contractor will pay its personnel wages that meet or exceed prevailing wages. For purposes of this Section 23.1.3, prevailing wages will be as defined by California Labor Code sections 1770, 1773, and 1773.1.

23.1.4 At PG&E's request, Contractor will provide PG&E a certified copy of its payroll, including benefits, broken out by PG&E department for all Work that is subject to this Article 23.

23.1.5 All requirements of this Section 23.1 will extend to subcontractors (inclusive of all tiers).

23.1.6 If the provisions of this Section 23.1 conflict with the requirements of other Sections of these General Conditions or any Special Conditions to the MSA or CWA, this Section 23.1 will prevail.

## **23.2 Contractor's Labor Relations**

23.2.1 General. Contractor shall promptly notify PG&E in writing of any labor dispute or anticipated labor dispute which may affect the time, performance or cost of the Work.

23.2.2 Local Bargaining. In addition to Contractor's legal obligations under the Labor-Management Relations Act ("LMRA"), if Contractor is a subscriber to a multi-employer bargaining association or group, Contractor will, if PG&E directs, participate to the fullest extent in the collective bargaining of that group with any labor organizations claiming jurisdiction over any portion of the Work.

23.2.3 Interim Agreements. Contractor will not make interim agreements with labor unions during contract bargaining designed to avoid strikes sanctioned by an international union or by a local building trades council or engage in other activities which might undermine management efforts at the bargaining table.

23.2.4 Strike. In the event of a labor dispute or strike by Contractor's or its subcontractor (inclusive of all tiers)'s employees that threatens the progress or cost of the Work or PG&E's labor relations, or which disrupts PG&E's operations, or results in a secondary boycott at PG&E facilities, PG&E reserves the right to restrict additional hiring of Contractor's or subcontractor (inclusive of all tiers)'s employees, to suspend or discontinue the Work of Contractor and any subcontractor (inclusive of all tiers), or terminate the MSA or CWA. This

Section 23.2.4 will be applicable whether or not Contractor or any subcontractor (inclusive of all tiers) is directly involved in a labor dispute.

**23.2.5 Existing Union Contracts.** Contractor will not make labor agreements with any local construction trade union affecting the performance of the Work or its cost to PG&E, independent of or in conflict with agreements in effect between the local contractors' association and the union, without first obtaining written approval from PG&E.

**23.2.6 National Agreements.** Contractor will, within 15 days after award of a MSA, supply PG&E with copies of national agreements to which Contractor is a party. No later than 5 days before the expiration of any local agreement which may affect the Work, Contractor will meet with PG&E for the purpose of discussing the appropriate course of action.

**23.2.7 Jurisdictional Disputes.** Contractor and its subcontractors (inclusive of all tiers) will take steps to resolve violations of collective bargaining agreements and jurisdictional disputes, including without limitation the filing of appropriate process with any court or administrative agency having jurisdiction to settle, enjoin, or to award damages resulting from violations of collective bargaining agreements or from jurisdictional disputes.

**23.2.8 Labor Supply.** Contractor will provide a sufficient number of skilled union workers to fulfill the requirements of the MSA and CWA.

**23.2.9 Apprentices.** It is important to PG&E that the Work be performed in the most economical manner consistent with MSA and CWA requirements. It is also in PG&E's best interest to have an adequate number of trained workers within its service area to perform construction work that may be required. Contractor will actively participate in union apprentice programs and exert its best effort to maintain the maximum complement of apprentices in the field work force as permitted by the local collective bargaining agreements. Contractor will employ during the performance of the MSA and CWA the number of apprentices or trainees, or both, in each occupation, called for by each applicable labor agreement; will take whatever steps may be necessary to assure that 25% of the apprentices or trainees in each occupation are in their first year of training; and will agree to maintain and make available for inspection, upon PG&E's request, Contractor's records on employment of apprentices, trainees, and journeymen, in each occupation.

**23.2.10 Use of Prefabricated Material.** Contractor will install prefabricated or preassembled equipment where specified or purchased by PG&E, or otherwise where it is deemed to be the most economical alternative fabricated in a union shop and without necessary change or rework.

## **24. DRUGS AND ALCOHOL**

### **24.1 PG&E Drug and Alcohol Policy.**

**24.1.1** PG&E is committed to maintain and promote job safety and health for all workers at its facilities. In addition, PG&E is determined to protect its employees, customers, and the general public while they are on PG&E property from any harm caused by illegal drug and alcohol use by non-PG&E personnel. To accomplish these objectives, PG&E has established the following drug and alcohol policy for access to PG&E facilities by Contractor and subcontractor personnel, which applies to the personnel of Contractor and subcontractors

(inclusive of all tiers) performing any Work or Services at PG&E offices and/or any other PG&E facilities.

24.1.2 PG&E may deny access to, or remove from, its facilities the personnel of Contractor or any subcontractor (inclusive of all tiers), who PG&E has reasonable grounds to believe has: (a) engaged in alcohol abuse or illegal drug activity which in any way impairs PG&E's ability to maintain safe work facilities, to protect the health and well-being of PG&E employees, customers, and the general public, and to promote the public's confidence in PG&E's service and operations; or (b) been found guilty, pled guilty, or pled *nolo contendere* to a charge of sale or distribution of any illegal drug or controlled substance as defined under Federal or California state law within the past 5 years, unless the criminal record was later expunged or sealed by a court order.

24.1.3 The following activities are prohibited at all facilities owned or leased by PG&E: (a) possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances as defined under Federal or California state law; (b) possessing, furnishing, selling, offering, or using alcoholic beverage, or being under the influence of alcohol.

24.1.4 Where reasonable cause exists that Section 24.1.3 has been violated, Contractor or its subcontractor must inform the PG&E representative responsible for oversight of the Services or Work. The Contractor will take any or all of the following actions to the fullest extent they are permitted under governing collective bargaining agreements and/or its applicable security and human resources policies: (a) search the individual, his or her vehicle, locker, storage area, and personal effects; (b) require the individual to undergo a medical examination to determine their fitness for duty; such examination will include obtaining a urine and/or blood specimen for drug or alcohol analysis unless the examining physician deems such tests to be inappropriate; (c) take any other appropriate action to determine if there has been a violation of Section 24.1.3. Refusal to comply with a request made under this paragraph will be grounds for denying access to, or immediate removal from, any PG&E facility.

24.1.5 Any individual who has been denied access to, or removed from, PG&E facilities for violating this policy may obtain permission to enter or reenter provided the individual establishes, to the satisfaction of his or her employer and PG&E, that the previous activity which formed the basis for denying access or removal has been corrected and his or her future conduct will conform with this policy. PG&E retains the right of final approval for the entry or reentry of any individual previously denied access to or removed from PG&E facilities.

## **24.2 U.S. Department of Transportation Regulations for Drug and Alcohol Testing of Commercial Motor Vehicle Drivers.**

24.2.1 Contractor agrees that, to the extent it may be applicable to the MSA or CWA, Contractor will comply with the U.S. Department of Transportation's ("DOT") regulations for commercial motor vehicle drivers, 49 CFR 382, Controlled Substances and Alcohol Use and Testing. Contractor will establish and maintain a drug and alcohol testing program for drivers of commercial motor vehicles consistent with 49 CFR Part 40, Procedures for Transportation Workplace Drug Testing Programs. Contractor will ensure that any subcontractor (inclusive of all tiers) hired by Contractor to perform any portion of the Work under the MSA and CWA that is regulated by 49 CFR 382 will also have a drug and alcohol testing program that complies with applicable DOT requirements.

24.2.2 PG&E's duly authorized representatives, the California Public Utilities Commission, DOT, and appropriate agencies will have, during the term of the Contract and for two years thereafter, access at all reasonable times to Contractor's drug and alcohol testing program records for the purpose of monitoring compliance with DOT regulations. Contractor will ensure that any subcontractor (inclusive of all tiers) hired by Contractor to perform any portion of the Work regulated by 49 CFR Part 382 under the MSA and CWA will also provide access to its drug and alcohol testing program records to PG&E's authorized representatives, the California Public Utilities Commission, DOT, and appropriate agencies for the purpose of monitoring compliance with DOT regulations. Failure to comply with this Section may, at PG&E's option, result in cancellation or termination of existing contracts and the loss of opportunity to bid on future contracts.

## **25. PG&E REQUIREMENTS AND POLICIES**

### **25.1 Equal Employment Opportunity And Affirmative Action Regulations Policy.**

During the performance of the Service or Work and to the extent they may be applicable, Contractor agrees to comply with all Applicable Laws, orders, and regulations included by summary or reference in the following paragraphs

25.1.1 Executive Order 11246, 41 CFR Part 60-1.4: Equal Opportunity Clause.

25.1.2 Executive Order 11246, 41 CFR Part 60-1.8: Non-segregated Facilities.

25.1.3 Vietnam Era Veterans' Readjustment Assistance Act of 1974, 41 CFR Part 60-250.5.a: Equal Opportunity Clause.

25.1.4 Vietnam Era Veterans' Readjustment Assistance Act of 1974, 41 CFR Part 60-300.5.a: Equal Opportunity Clause.

25.1.5 Section 503 of the Rehabilitation Act of 1973, 41 CFR Part 60-741.5.a: Equal Opportunity Clause.

25.1.6 Executive Order 13496 – Employee Rights Under The National Labor Relations Act. To the extent applicable, the employee notice requirements set forth in 29 C.F.R. Part 471, Appendix A to Subpart A are incorporated by reference into the MSA and applicable CWA.

**25.2 Diversity Program.** It is PG&E's policy that women, minority, and disabled veteran business enterprises ("WMDVBE") have the maximum practicable opportunity to participate in providing the products and services PG&E purchases.

25.2.1 Contractor agrees to comply, and to require all subcontractors (inclusive of all tiers) to comply, with PG&E's Supplier Diversity Purchasing Policy, set forth in Attachment 6 to the MSA. Contractor must provide all prospective subcontractors (inclusive of all tiers) with a copy of Attachment 6 to the MSA.

25.2.2 In addition, for contracts exceeding \$500,000 (or \$1 million for construction contracts), Contractor must comply with the policy regarding utilization of small business concerns and small disadvantaged business concerns, as described in Attachment 6 to the MSA. The subcontracting plan for these contracts must include provisions for implementing the terms prescribed in Attachment 6. However, small business and small